UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

In the Matter of:

	Case No.
LEHMAN BROTHERS HOLDINGS INC., ET AL.,	08-13555-jmp
Debtors.	

- -x

In the Matter of:

	Case No.
LEHMAN BROTHERS INC.,	08-01420-jmp SIPA
Debtor.	

- -x

LEHMAN BROTHERS SPECIAL FINANCING INC.

Plaintiff,	Adv. No.
v.	09-01032-jmp

BALLYROCK ABS CDO 2007-I LIMITED

Defendant.

- -x

- -x

KATHLEEN ARNOLD AND TIMOTHY COTTEN,

Plaintiffs, Adv. No.

v. 11-01540-jmp

LEHMAN BROTHERS HOLDINGS INC., ET AL.,

Defendants.

- -x

TURNBERRY, ET AL.,

Plaintiffs, Adv. No.

v. 09-01062-jmp

LEHMAN BROTHERS HOLDINGS INC., ET AL.,

Defendants.

- -x

LEHMAN BROTHERS HOLDINGS INC., ET AL.,

Plaintiffs, Adv. No.

v. 10-02821

J. SOFFER, FONTAINBLEAU RESORTS, LLC.,

Defendant

- -x

- -x

LEHMAN BROTHERS HOLDINGS INC., ET AL.,

Plaintiffs, Adv. No.

v. 10-02823

J. SOFFER, FONTAINBLEAU RESORTS, LLC.,

Defendant

- -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

June 15, 2011

10:04 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

Motion of James W. Giddens, as Trustee for the SIPA Liquidation of Lehman Brothers Inc., Pursuant to Section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, for an Order (i) Approving a Settlement with Australia and New Zealand Banking Group Limited ("ANZ" and (ii) Dismissing ANZ from Adversary Proceeding in Connection with its Assignment of Claims to Trustee [LBI Docket No. 4300, Adv. Pro. No. 08-1759 Docket no. 36]

Motion of Lehman Brothers Holdings Inc. for Authority to (i) Sell Two Portfolios of Ginnie Mae Reverse Mortgage Loans to MetLife and (ii) Assign all Rights and Delegate all Obligations Thereunder [Docket No. 17059]

Motion of Lehman Commercial Paper Inc. for Approval of Settlement and Compromise with Latshaw Drilling Company, LLC and Latshaw Drilling and Exploration Company, Inc. [Docket No. 16806]

Debtors' Motion to Extend Stay of Avoidance Actions and Grant Certain Related Relief [Docket No. 17195]

Motion of Lehman Brothers Holdings Inc. Motion for Approval of Settlement Agreement Relating to Real Property Located at 1107

Broadway [Docket No. 17129]

Motion to Compel the Production of Documents from Goldman Sachs & Co., and Goldman Sachs, Inc. [Docket No. 17231]

Lehman Brothers Special Financing Inc. v. Ballyrock ABS CDO 2007-I Limited Case Conference

Kathleen Arnold and Timothy A. Cotten v. Lehman Brothers Holdings Inc. Expedited Motion for Court's Determination

Turnberry et al. v. Lehman Brothers Holdings Inc. Plaintiff's Motion to Dismiss Counterclaims and Pretrial Conference

Lehman Brothers Holdings Inc. v. J. Soffer, Fontainebleau Resorts, LLC [Adversary Case No. 10-2821] Defendant's Motion to Dismiss Count IV of the Complaint and Pretrial Conference

Lehman Brothers Holdings Inc. v. J. Soffer, Fontainebleau Resorts, LLC [Adversary Case No. 10-2823] Defendant's Motion to Dismiss Count IV of the Complaint and Pretrial Conference

Transcribed by: Linda Ferrara

A P P E A R A N C E S :

WEIL, GOTSHAL & MANGES LLP
Attorneys for Debtors
767 Fifth Avenue
New York, NY 10153

BY: JACQUELINE MARCUS, ESQ.
SCARLETT COLLINGS, ESQ.
RICHARD W. SLACK, ESQ.
ZAW WIN, ESQ.
ELISA LEMMER, ESQ.

WEIL, GOTSHAL & MANGES LLP
Attorneys for Debtors
700 Louisiana
Suite 1600
Houston, TX 77002

BY: ALFREDO R. PEREZ, ESQ.

MILBANK, TWEED, HADLEY & MCCLOY LLP
Attorneys for Official Committee of Unsecured Creditors
One Chase Manhattan Plaza
New York, NY 10005

BY: DAVID S. COHEN, ESQ.
DENNIS F. DUNNE, ESQ.

HUGHES HUBBARD & REED LLP
Attorneys for James W. Giddens, SIPA Trustee
One Battery Park Plaza
New York, NY 10004

BY: JEFFREY S. MARGOLIN, ESQ.
DAVID S. LUBELL, ESQ.

WHITE & CASE LLP
Attorneys for Ad Hoc Group of Lehman Brothers Creditors
1155 Avenue of the Americas
New York, NY 10036

BY: GERARD UZZI, ESQ.

CHAPMAN AND CUTLER LLP
Attorneys for U.S. Bank
330 Madison Avenue
New York, New York 10017-5010

BY: CRAIG M. PRICE, ESQ.

OUTTERBOURG, STEINDLER, HOUSTON & ROSEN, P.C.
Attorneys for Bank of Tokyo-Mitsubishi
230 Park Avenue
New York, New York 10169

BY: JOHN A. BOUGIAMAS, ESQ.

EMMET MARVIN & MARTIN LLP
Attorneys for ANZ Bank
120 Broadway
New York, New York

BY: EDWARD P. ZUJKOWSKI, ESQ.

SCHULTE ROTH & ZABEL, LLP
Attorneys for 1107 Broadway LLC
919 Third Avenue
New York, New York 10022

BY: DAVID M. HILLMAN, ESQ.

KIRKLAND & ELLIS
Attorneys for Liquidators of Lehman Brothers Australia
601 Lexington Avenue
New York, New York 10022

BY: EVAN J. SAUCIER, ESQ.

KASOWITZ, BENSON, TORRE & FRIEDMAN, LLP
Attorneys for the Debtors
1633 Broadway
New York, New York 10019

BY: MICHAEL C. HARWOOD, ESQ.

CLEARY GOTTLIEB STEEN & HAMILTON, LLP
One Liberty Plaza
New York, New York 10008

BY: LISA M. GOULDY, ESQ.

LOCKE LORD BISSELL & LIDDELL, LLP
Attorneys for Wells Fargo as Trustee
3 World Financial Center
New York, New York 10281

BY: CASEY B. HOWARD, ESQ.

SIDLEY AUSTIN, LLP
Attorneys for Black Rock
787 Seventh Avenue
New York, New York 10019

BY: NICHOLAS P. CROWELL, ESQ.

QUINN EMANUEL URQUHART & SULLIVAN, LLP
Attorneys for the Committee
51 Madison Avenue
New York, New York 10010

BY: ROBERT DAKIS, ESQ.

ORRICK, HERRINGTON & SUTCLIFFE, LLP
Attorneys for Ballyrock CDO
51 West 52nd Street
New York, New York 10019

BY: STEVEN J. FINK, ESQ.

SULLIVAN & CROMWELL, LLP
Attorneys for Barclay's Bank PLC
125 Broad Street
New York, New York 10004

BY: ROBINSON B. LACY, ESQ.

BUCHANAN INGERSOLL & ROONEY, PC
Attorneys for Turnberry
1290 Avenue of the Americas
New York, New York 10104

BY: ELLIOT J. BLUMENTHAL, ESQ.

RICHARD AND RICHARD, P.A.
Attorneys for J. Soffer
825 Brickell Bay Drive
Miami, Florida 33131

BY: DENNIS A. RICHARD, ESQ.

TURNBERRY ASSOCIATES
19950 W. Country Club Drive
Aventura, Florida 33180

BY: MARIO A. ROMINE, ESQ.

TELEPHONICALLY:
KATHLEEN ARNOLD, pro se
TIMOTHY A. COTTEN, pro se

P R O C E E D I N G S

THE COURT: Be seated, please. Good morning.

I have a note that says that the SIPA matters are going to go first.

MR. LUBELL: Good morning, Your Honor.

THE COURT: Good morning.

MR. LUBELL: Dan Lubell from Hughes Hubbard & Reed on behalf of James W. Giddens, trustee at Lehman Brothers Inc. I'm here today on the trustee's motion for an order approving a settlement with Australia and New Zealand Banking Group, Ltd. or "ANZED" (ph.) as they call it down under. The order also would dismiss ANZED from the Options Clearing Corp. interpleader adversary proceeding in connection with the assignment of ANZED's claims to the trustee under the settlement agreement.

THE COURT: Do I have to call them ANZED or can I call them ANZ?

MR. LUBELL: I defer to what you would like to call them. If you would prefer, I can call them ANZ too.

THE COURT: Well, let's call them whatever name they prefer but I suppose they answer to ANZ, as well.

MR. LUBELL: Yes, they do.

THE COURT: Good.

MR. LUBELL: Your Honor, I am pleased to report that there were no objections filed to the substance of the

trustee's settlement with ANZ. The settlement will bring more than 83 million dollars into the LBI estate. It was also streamline the Options Clearing Corp. interpleader action by dismissing ANZ in connection with its assignment of claims to the trustee.

The settlement is eminently reasonable, being reached after extended arms length negotiations and document exchanges. It also conserved resources of all parties as it was achieved without commencing formal litigation. We received a limited objection from Bank of Tokyo Mitsubishi and a joinder to that objection by Lloyds TSB Bank. Both of them are interpleader defendants in the Options Clearing Corp. adversary. Those limited objections have now been resolved by a paragraph in the proposed order. The revised proposed order clarifies that the settlement does not affect the rights of the remaining parties to the interpleader action.

It also provides that notwithstanding ANZ's dismissal from that proceeding, ANZ will continue to be subject to the discovery obligations of a party under the federal rules.

Unless the court has any questions, we would propose to submit the revised proposed order for Your Honor's approval at the end of the hearing.

THE COURT: No, it's fine. I don't have any questions provided that the limited objections have been resolved in a manner satisfactory to the parties who objected and I accept

your representation that the language you've referenced solves that problem.

One question I have is whether ANZ has confirmed that it will, in fact, be subject to the discovery that you have just referenced and if they're here to confirm that.

MR. LUBELL: Yes, Your Honor, they have agreed to the language.

THE COURT: There's someone standing who is apparently about to put something on the record that will tie that point down.

Good morning.

MR. ZUJKOWSKI: Good morning, Your Honor. Ed Zujkowski of Emmet Marvin & Martin for ANZ. And I am allowed to call that ANZ.

THE COURT: Good.

MR. ZUJKOWSKI: Yes, we'll confirm that, Your Honor, after much discussion we have agreed that ANZ will be subject to discovery as provided in the amended order.

THE COURT: Fine. Thank you. It's approved subject to my seeing the order.

MR. LUBELL: Thank you, Your Honor.

THE COURT: And if you wish to be excused, you can be excused.

MS. MARCUS: Thank you, Your Honor.

THE COURT: Good morning.

MS. MARCUS: Good morning, Your Honor. Jacqueline Marcus of Weil Gotshal & Manges on behalf of Lehman Brothers Holdings Inc. and it's affiliated debtors.

Item number one on the agenda, Your Honor, is the motion of Lehman Commercial Paper, Inc. for approval of a settlement and compromise with Latshaw Drilling Company and Latshaw Exploration Company.

As Your Honor may recall, we were before you regarding the debtors' dispute with Latshaw back in April of 2010. At that time, you permitted Latshaw to withdraw its proof of claim against LCPI and we went to the Bankruptcy Court for the Northern District of Oklahoma where Latshaw's bankruptcy's case was pending to litigate Latshaw's objection to LCPI's claim.

I'm pleased to report that after fairly extensive litigation in Tulsa, as well as two rounds of court-ordered mediation, LCPI and Latshaw have reached a settlement of their dispute which has been incorporated into the settlement agreement that we seek approval of today.

That settlement agreement has already been approved by Judge Rasure of the Northern District of Oklahoma by order dated May 27. The terms of the settlement are summarized in the motion. I'm prepared to summarize them again today if the Court would like me to do that.

THE COURT: If you'd like that for the record, that's fine. But we had requested a copy of the settlement agreement

which we received yesterday afternoon. I've had a chance to review the settlement agreement. I'm satisfied with its terms.

MS. MARCUS: Then I won't burden you with a further summary on it.

THE COURT: There's no -- unless you want it on the record for other reasons.

MS. MARCUS: I don't see any reason for doing that.

THE COURT: Fine.

MS. MARCUS: As indicated in the agenda, Your Honor, this is an uncontested motion. LCPI has filed a declaration of Howard Liao in support of the motion. Mr. Liao is present in court today.

The creditors committee which has been kept apprised of the status of the dispute with Latshaw, the litigation, and the mediation does not object to the terms of the settlement. For all of the reasons set forth in the motion and the Liao declaration, LCIPI requests that the Court approve the settlement agreement.

THE COURT: I approve the settlement agreement and I'm satisfied that it's a fair and reasonable resolution of the issues.

MS. MARCUS: Thank you, Your Honor. Item number two will be handled by my partner, Alfredo Perez.

MR. PEREZ: Good morning, Your Honor. Alfredo Perez. Your Honor, I'm here on a matter in which Lehman is selling two

packages of reverse mortgages to MetLife. In essence, these are residential reverse mortgages involved in two securitizations that are guaranteed by Ginnie Mae. Your Honor, we filed a declaration of Ron Dooley on Monday, elaborating on the sales process that we went through in selling the loans. In addition, Your Honor, yesterday we filed a form of sale agreement with the motion. Your Honor, we did not receive any objections.

This transaction is really the tail end of one of the bank transactions. Aurora had actually funded most of these loans and with the sales proceeds will be repaid the amounts that they funded. Pursuant to the overall bank transaction we had committed to repay those loans and to take that amount off of Aurora's books.

By means of this motion, we're able to do that. In addition, Your Honor, not only are we going to receive approximately 43 million dollars, but we're also going to be removed of the potential liabilities and exposure going forward which we estimate to be about 75 million dollars on a go forward basis.

Your Honor, there are very few parties that are authorized by Ginnie Mae to actually service these mortgages and hold these mortgages. MetLife was the original services that Aurora bought it from or one of MetLife's predecessors-in-interest. So, in essence, MetLife has retained many of the

obligations as the initial purchaser, if you will and as a result, the execution risks of doing a transaction with MetLife are significantly less than they would be with anybody else.

THE COURT: One of my concerns in this transaction and it's probably not going to come as a surprise to you is that based upon the statements made in the motion and in the supporting declaration, the number of authorized parties with whom you can negotiate is limited.

I'm wondering if you can just describe how you're able to assure yourself as to the fairness of the price in light of this thin market.

MR. PEREZ: Yes, Your Honor. And Mr. Dooley is here and he can correct me if I am wrong. But as the Court can tell from the declaration, I mean this process started back in 2009 and we were originally just negotiating with a couple of parties. This is not an area where people have a lot of ability to step into the shoes and satisfy all of Ginnie Mae's requirements.

We, in essence, with the help of Ginnie Mae, in essence contacted anybody and everybody who could be a possible candidate. It was expanded during the course of 2010 and 2011 and we actually had about four potential candidates. One two bid and then it was a situation with those two; MetLife and another party that we actually had the final negotiations to determine what the best price could be.

THE COURT: Was there anything else that the debtor did to assure itself that the price being achieved here represents fair market value?

MR. PEREZ: Your Honor, only through testing the market. The bids that we got were, in essence, roughly the same amount and with the execution costs associated with the -- if we hadn't done the deal with MetLife, they were almost a push as between the two numbers, so other than testing the market with the people who were able to sell it -- I guess the alternative would have been, Your Honor, for us to have paid Aurora the money because we really needed to get it off of their books as part of the settlement that we did a while back. We could have actually paid Aurora the money and then held the mortgages. The problem with that, of course, is that we would have had to fund an additional probably another 75 million dollars before it was all said and done. It's not a strategic -- it's not a big strategic asset. There's really no upside for us.

THE COURT: Okay. You're satisfied that the debtor exercised reasonable business judgment in deciding to sell to MetLife.

MR. PEREZ: We are, Your Honor. And another point is I think this -- MetLife is on the creditors committee. So I think from the standpoint of the creditors committee and the non-MetLife members of the creditors committee, I think this

transaction got a lot of scrutiny simply because there was a member of the creditors committee involved.

THE COURT: That's a nice opening for me to ask counsel for the committee for his comments.

MR. O'DONNELL: Your Honor, Dennis O'Donnell, Milbank Tweed Hadley & McCloy on behalf of the committee.

Yes, Mr. Perez is correct, this transaction did receive significant scrutiny from the committee, minus MetLife, obviously who is conflicted, and we asked the same question you asked Your Honor, because we needed to be convinced that an auction was not necessary here. That, in fact, the four people -- four potential parties that were identified were the universe and a combination of talking through the issues with the debtors and independently verifying through our financial advisors convinced us that this was the best available option. And we're comfortable that it's the transaction that should be approved by the Court.

THE COURT: Fine. Thank you. Anyone else who wishes to be heard?

(No response.)

THE COURT: Apparently not. It's approved.

MR. PEREZ: Thank you.

MS. MARCUS: Item number three on the agenda, Your Honor, is the debtors' motion to extend stay of avoidance actions and granted certain related relief.

Pursuant to this motion, the debtors seek the following relief; first, an extension of the order staying avoidance actions which currently expires on July 20, 2011 to January 20, 2012. As indicated in the debtors' reply in further support of the motion, Your Honor, our initial request was for a nine month extension of the initial stay order but we have agreed to reduce our request to six months after consultation with the creditors committee.

Second, the debtors seek an extension of the time to complete service of process on avoidance action defendants until the later of August 30, 2011 or the time otherwise prescribed by the bankruptcy rules. This portion of the motion has not been objected to by anybody.

As set forth in the motion, as well as the reply, the debtors have taken full advantage of the stay to conduct further investigation with respect to the avoidance claims that are the subject of tolling agreements, initiate settlement discussions with avoidance action defendants and continue the ADR process. The success of the ADR process is irrefutable. As indicated in the reply, as well as in the monthly status report filed yesterday by Peter Gruenberger, as a result of mediation the debtors have achieved settlements of eighty-four ADR matters involving ninety-five counterparties generating in excess of 759.8 million dollars for the estates.

Another measure of success is that out of the forty-

four ADR matters that have reached the mediation stage, forty of them have been settled. As indicated in Mr. Gruenberger's letter, another ten mediations have been scheduled to commence between today and September 8 of this year.

The debtors seek an extension of the stay to enable them to continue to build on the successful ADR process and to resolve pending matters while minimizing the time and expense expanded by the debtors and avoidance action defendants and the burden on the Court.

The SPV derivatives ADR procedures which were approved in March of this year, are more complex and more time consuming to apply than the original ADR procedures. The debtors should be given additional time to make the most of those procedures before the stay terminates.

The debtors submit that under Section 105 of the Bankruptcy Code, the sheer number and complexity of the avoidance actions, the lack of prejudice to any of the avoidance action defendants and the progress achieved to date warrant the requested extension of the stay.

Moreover, the debtors are at a critical juncture of these Chapter 11 cases. As the Court is aware, there are three competing plans on file and a disclosure statement hearing is imminent. While the debtors intend to continue resolving avoidance actions during the extended period of the stay, they should be permitted to focus their attention at this time on

negotiating the terms of their Chapter 11 plan, obtaining approval of their disclosure statement and obtaining confirmation of that plan.

The extension of the stay would affect more than 360 parties, yet only two parties U.S. Bank and the liquidators of LB Australia, are the only entities that have objected to the proposed extension. U.S. Bank has objected to virtually every one of the debtors initiatives to streamline the Chapter 11 process and avoid unnecessary litigation. The U.S. Bank objection is almost identical to the objection that they filed to the initial stay motion. The debtors responded at length to that objection in our reply filed in support of the initial motion and we're not going to rehash all of those arguments this morning.

At the hearing held with respect to the initial stay motion, the Court rejected U.S. Bank's arguments and the debtors believe it is appropriate for the Court to do so again. I'll reserve further comments with respect to U.S. Bank's objection until their counsel has had an opportunity to be heard.

The other objection was filed by the liquidators of LB Australia. LB Australia is neither an avoidance action defendant nor even a creditor in these cases. LB Australia did not object to the initial stay order but it made the same arguments it asserts in its objection in its motion to

intervene in one of the avoidance actions, adversary proceeding 10-3545; a request that the Court denied.

LB Australia requests that the Court exclude this adversary proceeding from the stay on the basis that LB Australia cannot wind up its own estate until the Court makes a determination on the enforceability of the flip clauses in the Dante program.

But the carve-out suggested by LB Australia would be basically the exception that swallows the rule. This adversary proceeding involves hundreds of defendants and hundreds of millions of dollars. So to permit it to proceed would open the floodgates to a substantial amount of litigation.

Moreover, as set forth in our reply, LB Australia is not a party-in-interest in these cases and therefore, is not even entitled to be heard with respect to the stay. We have cited the Second Circuit's decision in Refco and Judge Chapman's recent decision in Innkeepers as support for the proposition that LB Australia as a noteholder of an SPV that is at best a creditor of LBSF lacks standing to be heard in this matter.

The issues raised in the objections pale in comparison to the success of the debtors efforts to resolve these actions, the potential for continued success in resolving these matters and the prejudice to the debtors and their estates that would result from a full scale resumption of litigation at this

juncture. As a result, the debtors request that the objections be overruled and the Court extend the stay for an additional six months.

Your Honor, we did file a proposed order with the motion. We have a form, a blacklined form of the order that reflects the change to the six month extension. I can hand that up now if you would like to see it.

THE COURT: I'd like to see it, although I assume the major change is just from nine months to six months.

MS. MARCUS: And it also references the fact that objections were filed.

THE COURT: All right. Fine. Happy to see it. Thank you.

I'll hear from the two objectors.

MR. PRICE: Good morning, Your Honor. Craig Price from Chapman & Cutler on behalf of U.S. Bank. We are the -- U.S. Bank is a defendant in a large number of the avoidance actions and we filed an objection to the continuation of the stay. First of all, we'd like to just make clear that contrary to the assertions of the debtors, that U.S. Bank has not been obstructionist in these cases. U.S. Bank has actively worked with the debtors to, among other things, settle twenty interest rate cap and court-ordered transactions, settle sixty negative amortizing transactions, settled a number of securitization interest rate swaps, settled the Madison Avenue transaction,

resolved certain issues with respect to the Pine Spruce and Verona transactions, agreed to terms to let the estate have control over certain research transactions, resolved numerous other swap transactions and with regard to the SPV derivatives, ADR procedures, with regard to every transaction that we've been served an ADR notice with, we have put forward an authorized designee.

Despite this, U.S. Bank has a duty to both itself and its noteholders to uphold its rights. The law regarding implementation of a stay is clear where there's a possibility that issuing a stay will cause prejudice to others. The debtors have the burden to show hardship. U.S. Bank doesn't believe in this instance, that merely alleging that the stay will be inconvenient and expensive is enough, to the extent that the stay is lifted, we don't believe that it will result in a flood of litigation. If other parties do not wish to litigate, they can enter into tolling agreements and extend its scheduling orders. This would allow those parties to protect their rights while at the same time allowing other parties to litigate and pursue their interests.

Even to the extent that this court allows this -- continues the stay, the Court should maintain an even balance with regard to the various parties. The debtors completely failed to address the trustee's concerns that the U.S. Bank and its noteholders will suffer prejudice.

THE COURT: Could you explain that to me?

MR. PRICE: Sure.

THE COURT: What --

MR. PEREZ: Sure.

THE COURT: What's the prejudice? I read your papers and they are similar to papers filed in connection with the initial request for a stay. And I understand that you assert that U.S. Bank has been constructive in a variety of other ways and I recognize that you have fiduciary duties and as a result are here to make a record that you're protecting the interest of your beneficiaries.

But how, really, is anybody prejudiced by a six month stay, particularly since opening the litigation will not lead to expeditious resolution.

MR. PRICE: The resolution; okay. Right. Well, U.S. Bank on its own behalf is primarily concerned if it's sued in its individual capacity. It serves, as you know, as an intermediary. But to the extent that it is sued in its individual capacity, the statue of limitations could run, defenses could be lost.

THE COURT: How?

MR. PRICE: How could the statute --

THE COURT: How would your defenses be lost?

MR. PRICE: Well, the one major defense is the statute of limitations runs in terms of receiving -- to the extent

we're an intermediary and we have to go after someone else, the statute of limitation would run in those instances. Those parties may disappear. A lot of these entities are foreign entities or incorporated in the Cayman Islands. They may disappear. They may have distributed all their assets to various holders.

THE COURT: Well, let's just say for the sake of argument, and that's all we're doing here, we're discussing this in a somewhat theoretical environment, that the stay were lifted, what would you do? And why can't you take steps now to investigate the locations of third-parties that might have some obligation to the bank?

MR. PRICE: Well I believe the bank is doing that but to the extent that a party distributes its assets or liquidates, we can't control that. And we can't control when that happens.

Another issue that we have is there are litigations that are ongoing that haven't been stayed or have been decided. In those instances, there are decisions being made that we can't participate in or that we can't litigate those issues. So the only --

THE COURT: I'm not understanding what you just said.

MR. PRICE: Oh, okay. There are certain cases like the Perpetual decision of the Ballyrock decision that have been made. Those cases are going forward or have gone forward,

decisions have been made, determinations are being made in those cases. We can't have similar determinations made with regard to our litigations because they're not going forward.

THE COURT: Well if similar decisions were going to be made in the litigations that are stayed, they would be decisions that are congruent with the decisions I've already made in Perpetual and Ballyrock as it relates to the flip clause. I don't know to what extent you're prejudiced. This certain --

MR. PRICE: Well, we can't pursue an appeal.

THE COURT: You --

MR. PRICE: We couldn't pursue an appeal.

THE COURT: You're not even -- you're not a party as far as I know to either the Perpetual or Ballyrock cases.

MR. PRICE: We're not a party but we have similar issues in our --

THE COURT: You sound like you're making an argument now that I'll be hearing in a moment from the liquidators in Australia. So why don't we reserve that for them.

MR. PRICE: Okay. So that's how we feel we'll be prejudiced. And we also believe that the noteholders will be prejudiced in the sense that the litigations can't continue -- can't commence. And also, there are instances where there's a lot of money in certain trusts. The claims of the debtors wouldn't take all of that money and those noteholders can't

have any distributions made at this time. They're going to have to wait an addition -- after waiting two and a half years, they're going to have to wait an additional six months. And if the debtors come back again, they're going to have to wait for whatever time period in order to have, you know, distributions made to them.

THE COURT: You understand as a person who has thought about this issue, that there are huge advantages to case administration and having the continuation of the stay, that the alternative dispute resolution procedures that have adopted here have produced remarkable successes and that in a case such as this, particularly with competing plans going on at this time, that it makes some sense for there to be a prioritization of how people behave in the bankruptcy case.

Do you say that notwithstanding those obvious benefits that the almost entirely theoretical propositions that you've advanced about the consequences of delay should somehow trump these benefits?

MR. PRICE: I mean we definitely understand that there have been enormous benefits to the stay but we also believe that we're being prejudiced. And we've asked for certain relief which I can explain now, that I think could resolve some of these issues which is to toll the applicable statute of limitations so that they don't run in the sense that if U.S. Bank is sued, those statute of limitations don't run. That's

something within this court's ability and purview that it could do. And we could also have the debtors state on the record that they won't be suing U.S. Bank in its individual capacity. And if those issues are resolved, the stay could continue.

THE COURT: Just for my information, did you attempt in any informal way to achieve by agreement the relief that you're now seeking to have me enter as a component of your objection?

MR. PRICE: Well, I do know that both of those requests were made in our initial objection and I do know that discussions have been ongoing with the debtors in the sense that we've resolved as I mentioned before, large numbers of these cases. So I can't specifically that I've been a part of those discussions but I know that they have been part of our past requests.

THE COURT: All right. I think I understand your position. I'd like to hear from the liquidators of Lehman Brothers Australia.

MR. SAUCIER: Your Honor, Even Saucier from the law firm of Kirkland & Ellis representing the liquidators of Lehman Brothers Australia. I won't take time going into the substance of our limited objection, of course unless Your Honor has questions, but I did want to address briefly the threshold question of whether we are a party-in-interest such that we can even make a limited objection here today.

Perhaps Your Honor will remember a few months back, we were before you seeking intervention in an adversary proceeding.

THE COURT: I remember it well.

MR. SAUCIER: So Your Honor denied our motion for intervention. We have appealed that order to the district court. That appeal is still underway and so as far as we're concerned, it's an open issue, whether we're a party-in-interest or not.

I will note that in the district court, LBSF has taken the position that Your Honor's order denying intervention was not on the basis of whether or not we were a party-in-interest but rather that we were foreclosed from even making the motion based on the stay order.

So as far as LBSF was concerned, there was not a determination by Your Honor as to whether or not we were a party of interest but rather that we couldn't even make such a motion because of the stay order. If we accept LBSF's argument on that point, then again, it hasn't been addressed whether or not we are a party-in-interest either for purposes of intervention or such that we could make a limited objection here.

THE COURT: Well I think there are two components to this notion of party-in-interest. My recollection -- I'm not characterizing what happened at the last argument, not am I

going to say anything that might have any impact on the pending appeal in the district court --

MR. SAUCIER: Understood.

THE COURT: -- but I think there are at least two layers to the notion of what a party-in-interest is. For purposes of the motion to intervene, your client was seeking to become a party in a particular adversary proceeding. Until you became such a party, you were a stranger to that litigation, except to the extent you had some indirect interests.

There's also the question which is being raised in the reference to the Innkeepers case or the Refco case, which is whether or not given the indirect nature of your interest in the underlying notes that you have standing for purposes of appearing and being heard in the bankruptcy case, which is I think a second dimension to the notion of standing, what are you referring to?

MR. SAUCIER: I am referring to the second. And just to follow-up with the second point because I understand that confusion may be -- what I first said could definitely be confused with the first party-in-interest that Your Honor was discussing.

With respect to the second, we'll say that when we were before this court briefing the intervention issue, LBSF had taken the position, hey, look liquidators Lehman Brothers Australia, you didn't even object to the original stay order

such that you can't now argue that you are foreclosed or someway aggrieved by the operations of that stay order which LBSF then characterized as saying you as a non-party cannot even make a motion in the first instance.

So now we're here today for an extension of that same stay order and the position that Lehman U.S. seems to be taking is oh, well we said you couldn't object in the first instance to the -- or you didn't object to the stay order in the first instance, but now that you're trying to do so, you don't have party-in-interest standing. It's sort of a circular argument as far as we're concerned.

THE COURT: Well I think what they're saying is that this is a motion seeking to extend for six months a stay of litigation and it just so happens that you're not a party to any of the litigation that's being stayed. I think that's the simplistic argument that's being made here. And I think even your own papers indicate that you are derivatively impacted by this because somehow the delay in resolving issues relating to the flip clause as a general matter somehow is affecting your ability to efficiently wind up your estate in Australia. Do I understand that correctly?

MR. SAUCIER: Correct.

THE COURT: Okay. But you're still not a party to the litigation.

MR. SAUCIER: No, in fact that issue is on appeal to

the district court which is why we think that it's not dispositive one way or the other whether or not we're a party-in-interest.

THE COURT: Well, at this moment, you're not a party-in-interest.

MR. SAUCIER: That is correct.

THE COURT: Okay. So at this moment, what standing do you have to complain about the extension of the stay?

MR. SAUCIER: Again, I think that issue has not been resolved. So for purposes of preserving our right to object now or later, we wanted to raise this issue for the Court.

THE COURT: Okay. You've raised it but I think we understand each other. You haven't waived the argument that you've just made because you've made it but you also don't have standing to be heard as a party-in-interest in any litigation that is the subject of the motion to stay.

MR. SAUCIER: Correct, Your Honor.

THE COURT: All right. in that case, you lose.

MR. SAUCIER: Okay.

THE COURT: And you understand that.

MR. SAUCIER: Yes, absolutely, Your Honor. I think my client's position is later down the road if we have an issue with the stay, we don't want to be accused of not having said anything in the bankruptcy court when the stay was under consideration. And that's why we wanted to get our interest

out in front of you.

THE COURT: Okay.

MR. SAUCIER: I'm not trying to pull a fast one on Your Honor. It's really just to preserve our right to object.

THE COURT: I never thought for a moment you were trying to pull a fast one.

MR. SAUCIER: Okay.

THE COURT: Okay.

MR. SAUCIER: I appreciate that, Your Honor.

THE COURT: Understood. Do you have more to say?

MR. SAUCIER: No, I am done unless Your Honor has any further questions.

THE COURT: No, you are done. Okay. Do you want to respond to U.S. Bank?

MS. MARCUS: Your Honor, I don't think I need to respond very extensively. I just wanted to elaborate on the Court's observation regarding the lack of prejudice. One of the other issues that U.S. Bank raises with respect to prejudice is that it will be difficult to track the recipients of any alleged preferential transfer later when the stay expires.

We find that very puzzling because we all know what the relevant preference period is and as Your Honor indicated, U.S. Bank can do that work now. There's no prejudice to them by waiting.

Secondly, with respect to the statute of limitations issue that U.S. Bank raised, under New York law, the cause of action doesn't accrue until liability is established. And therefore, any claims that U.S. Bank would have against third parties relating to any liability that U.S. Bank sustained, would not be -- the statute of limitations would not expire before the stay expires.

With respect to LB Australia, Your Honor, maybe I can clarify things just a bit. In addition to the fact that as Your Honor noted, they're not a party-in-interest in the litigation, in the actual adversary proceeding. Our point was that there are 359 defendants who have not objected to the extension of the stay. And LB Australia who isn't a defendant, who has objected, and we think the lack of objection of the other 359 is much more important for the Court to consider.

If you have no further questions, Your Honor, that's all I have.

THE COURT: No, I have no more questions. And the objection of U.S. Bank National Association to the extension of the stay is overruled. The objections touch on prejudice but frankly talk about prejudice in the most theoretical manner. The reality is that litigation in this court takes quite a long time to resolve. I have a matter on at 2 o'clock this afternoon and I'm not previewing it, it's just it's a 2009 adversary proceeding and I'm dealing with motions to dismiss

this afternoon. That litigation was unstayed.

Parties themselves, to a large extent, drive the timeline of litigation and whether or not litigation is stayed it is presumptuous for any party to assume that there is going to be a truly definitive determination of unsettled law within any reasonably predictable timeframe.

What is actually driving the limited objection with the liquidators of Lehman Brothers Australia and I believe the interests of certain other noteholders, is that desire to expedite some kind of appellate process that would result in an alternative determination of issues that have already been decided by this court.

Those issues relate to the ipso facto clause and the impact on the so-called flip clause in varies derivative transactions. In effect, issues completely unrelated to orderly case management are driving objections. One thing is indisputable, the bankruptcy court has the discretion to manage its docket. The order which is sought here simply provides that for an additional six month period, a certain portfolio of avoidance actions will not go forward in litigation. That doesn't mean that parties do not have an opportunity to resolve the issues in those litigations. In fact, they are encouraged to do so, whether by means of alternative dispute resolution procedures or through the more conventional means of picking up the telephone and suggesting that parties with decision making

authority sit down with one another to try to resolve the issues.

There's simply no purpose to be served in granting the objection of U.S. Bank National Association, other than to create unnecessary additional work that does not necessarily produce one iota of benefit to the parties.

The Court will enter the order extending the stay of the avoidance actions for a period of six months and it visciates the voluntary reduction of the nine month request to six months because in all likelihood if it hadn't been volunteered, it would have been voided anyway.

MS. MARCUS: Thank you, Your Honor.

THE COURT: Thank you.

MS. MARCUS: The next item on the agenda, Your Honor, item number four, is Lehman Brothers Holdings, Inc.'s motion for approval of a settlement agreement relating to real property located at 1107 Broadway.

In this motion, LBHI seeks approval of a settlement agreement with the mortgage borrower and the mezzanine borrower for the property. The settlement agreement is premised upon a purchase agreement pursuant to which the borrower has agreed to sell the property to 1107 Broadway Owner, LLC, referred to as "L&L" for 161.5 million dollars plus transfer taxes and carry costs paid by Lehman on the property since January 1, 2001.

In addition, and this is critical from the debtors'

perspective, the borrowers and L&L have agreed to an auction process much like a Chapter 11 auction in which L&L will act as the stalking horse and the property will be auctioned to the highest bidder.

If the order approving the settlement is entered by June 17, the expectation is that the auction for the property will take place on June 29. If the L&L price ends up being the best price for the property, LBHI would receive 142.3 million dollars of the sale proceeds, plus reimbursement of its carry costs and the borrowers would receive 19 million dollars. If the auction results in a higher price being obtained for the property, then LBHI and the borrowers would each get fifty percent of the excess purchase price after payment of a 2.5 million dollar break-up fee to L&L.

As set forth in the motion and the declaration of Jeffrey Fitts filed in support thereof, the debtors' business judgment is that the settlement agreement is fair and reasonable and in the best interest of the estate because it provides for a sale of the property at a fair price. It provides a mechanism for the estate to realize an even higher price as well as motivation for the borrower to obtain the best possible purchase price for the property.

It eliminates the delay attendant to completing the foreclosure process and the risk that a purchaser for the property at the same price may not be available when all the

litigation is concluded.

It eliminates the litigation risk relating to defenses that LBHI expects the borrowers to assert in the litigation including arguments relating to LBHI's failure to fund the draw request made by the borrower and it provides for withdrawal of proofs of claim in the aggregate amount of 126 million that have been filed against LBHI and the exchange of mutual releases.

As set forth in its statement filed in support of the motion, the creditors committee which has been kept up to date with regard to the debtors' efforts to find a solution for 1107 Broadway, supports the transaction. The settlement agreement satisfies the standards for approval set forth in Iridium and TMT Trailer Ferry cases. We've gone through the relevant factors in our reply.

The sole objection to the motion was filed by the ad hoc group of Lehman creditors. Essentially, the ad hoc group believes that Lehman made a bad business deal and that the settlement does not satisfy the relevant standards for approval of the compromising settlement.

Specifically, the ad hoc group claims that the motion has the following infirmities or the settlement has the following infirmities. They argue that the debtors have a strong litigation position against the borrower and the guarantor. It's interesting that the ad hoc group has made an

evaluation of the merits of the debtors litigation position considering that they have not involved in the litigation nor privy to the debtors' litigation strategy or discussions with counsel. It is hard to imagine how the ad hoc group can purport to know more than the debtors and their litigation counsel on this transaction.

As set forth in the debtors reply, it would not be in the debtors best interest for them to publicly air the issues relating to the foreclosure litigation for obvious reasons. The evaluation of Mr. Fitts who has primary responsibility for this matter arrived at after consultation with LBHI's counsel on this matter, the Dechert firm, should be sufficient to satisfy the debtors' burden.

Here we have even more, however. The creditors committee and its professionals who had been well-steeped in the facts and issues related to the litigation agree with the debtors' judgment.

The ad hoc's second argument is that there is no need to monetize 1107 Broadway at this point in time since distributions under the plan won't commence for at least several months. In the debtors' view, the foreclosure litigation could realistically take twelve to eighteen months. During that time, LBHI would have to continue to pay the carry costs of approximately two million dollars per year, as well as the associated litigation costs.

More importantly, however, the ad hoc group ignores the reality that in the event that a court approval of a settlement agreement is not obtained before the cut-off date which is August 25, 2011, the borrower and guarantor may terminate the settlement agreement. No one, not the ad hoc group, not Mr. Fitts and not the creditors committee knows whether there's another purchaser who would pay a comparable purchase price with or without a tenant for this space at some point in the future. That is a risk that the debtors are simply not prepared to take.

Third, the ad hoc group contends that there is no evidence that the property is at risk of diminishing in value. The debtors concede that point. On the other hand, the ad hoc group has not and cannot provide evidence that the value of the property will increase or even remain the same until the conclusion of the foreclosure litigation.

The debtors have a transaction in hand as a result of which they will receive in excess of 142 million dollars which is a significant amount of money even in the context of these cases. And several multiples of the amount that LBHI paid to reacquire the mortgage loan for Bankhaus. The ad hoc group wants to upset the transaction. The burden should be on them to prove that the asset will maintain its value if the settlement is not approved, a burden they cannot possibly sustain.

Finally, the ad hoc group alleges that even if a litigation is expensive, the debtors should pursue it because the guarantor is liable under the guarantees for the cost of litigation. This argument blithely ignores the possibility that the guarantor may have a valid dense to claims asserted under the guarantees in which case the cost of litigation would actually be borne by the debtors' estates. The debtors are prepared to proffer the testimony of Jeffrey Fitts in support of the motion. I don't know if the Court would like us to do that now or wait until after the ad hoc committee addresses the Court.

THE COURT: Well I think it makes sense to do this in an orderly way which includes, since we know it's controverted, having you put on your case, having the creditors committee put on its support of your case and then my hearing from the ad hoc group as objectors. I don't know whether the ad hoc group intends to cross-examine your proffer with respect to Mr. Fitts' testimony or has any independent evidence that it wishes to offer. Let me find out from Mr. Uzzi, who is now standing.

MS. MARCUS: Yes, Your Honor.

MR. UZZI: Your Honor, we would like to ask some questions. We have no objection to a proffer or relying on the affidavit. We do not have any independent evidence.

THE COURT: Okay. Fine.

MR. UZZI: Thank you.

THE COURT: So let's proceed with the proffer and then I'll hear from the creditors committee and then presumably, we'll cross-examine the proffer.

MS. MARCUS: That's fine. Your Honor, I offer pursuant to Federal Rules of Evidence 103(a)(2) and 611(a) as a proffer, the following testimony of Jeffrey Fitts. If called upon to testify, Your Honor, Mr. Fitts would testify as follows:

Mr. Fitts is a managing director of Alvarez & Marsal. He has more than twenty-two years of experience in assisting insolvent and troubled companies with a focus on operational and financial restructuring efforts. Prior to joining A&M, Mr. Fitts was a managing director with GE Commercial Finance where he led GE's Distressed Debt and Alternative Investment Group and managed complex distressed credits.

Before joining GE, Mr. Fitts was with the corporate workout division of Citicorp where he spent three years managing investment grade and middle market corporate workouts. Mr. Fitts began his career in 1990 as a workout officer and later an asset manager with Citicorp Real Estate where he managed more than one billion dollars of office, retail and industrial projects.

Mr. Fitts received a bachelor's degree from the University of Delaware in 1988. Mr. Fitts would testify that he was assigned to the representation of Lehman in September

2008. Mr. Fitts currently serves as the co-head of the real estate group of LBHI and certain other Lehman entities. Mr. Fitts' primary responsibility includes the day-to-day management and oversight of the real estate group's portfolio including management and oversight of real estate, real estate finance, and related activities.

As co-head of the real estate group, Mr. Fitts oversees a number of Lehman and A&M employees including Joelle Halperin, Anthony Barsanti, Chad DeMartino who have actively participated in negotiating the terms of the settlement.

Mr. Fitts would testify that he personally participated in many of the meetings and negotiations that resulted in the settlement agreement and is thoroughly familiar with all material aspects of the motion and the debtors' reply.

Mr. Fitts would testify that in October of 2007, a non-Lehman entity called 1107 Broadway, LLC, the mortgage borrower, acquired a sixteen story former office building located at 1107 Broadway in Manhattan. The mortgage borrower and certain of its affiliates entered into a number of loan facilities pursuant to which Lehman agreed to extend up to 343.4 million dollars to the mortgage borrower and its affiliates for the acquisition and development of the property.

These loans were secured by certain mortgages, assignment of leases, and rents, security agreements, and fixture filing statements. LBHI also received several

guarantees of the borrower's obligations from Yitzchak Tessler. Mr. Fitts would testify that the mortgage borrower and its affiliates drew an aggregate amount of approximately 228,344 dollars from these loan facilities and that shortly before the loan facilities matured, the borrowers made a draw request that Lehman did not fund.

Mr. Fitts would testify that the loan facilities matured on October 15, 2008, after the commencement of LBHI's Chapter 11 case and that each of the loans currently is in default. Mr. Fitts would testify that LBHI did not actively seek to enforce its rights with respect to the property in the initial months of these Chapter 11 cases because significant portions of the loans had been participated to other debtor and non-debtor entities.

After LBHI reacquired the participated portion of the mortgage loan from Bankhaus and following discussions with the creditors committee, LBHI commenced the foreclosure proceeding with respect to the mortgage loan in the New York State Supreme Court, New York County, on April 27, 2010.

Almost immediately after the commencement of the mortgage foreclosure proceeding, LBHI began negotiations with the borrowers in an effort to resolve the disputes and monetize Lehman's interest in the property. These negotiations included substantive discussions regarding a proposed transaction that contemplated a discounted payoff by the borrowers that would

have resulted in a significantly lower recovery for Lehman than what is contemplated under the settlement agreement.

Based on LBHI's discussions with third-parties, Mr. Fitts concluded that LBHI would have had to accept a steep discount on the face value of the loan facilities if it wanted to sell its interest in the loans without first resolving its dispute with the borrowers.

LBHI also received an inquiry from and subsequently began discussions with L&L which owns a neighboring building regarding various transaction structures both with and without the borrowers that would monetize LBHI's interest in the property. Since virtually the commencement of the foreclosure action, Mr. Fitts and others at LBHI were in frequent contact with the creditors committee's professionals regarding how to proceed with respect to the property.

Mr. Fitts would further testify that in April 2011 when negotiations with the borrower had reached an impasse, Lehman commenced mezzanine loan foreclosure proceedings under the Uniformed Commercial Code for public sales of the senior mezzanine pledged collateral and the junior mezzanine pledged collateral in order to accelerate the process of realizing a recovery on its investment in the property.

Shortly thereafter, the discussions among the borrowers, L&L and Lehman recommenced. The borrowers' original concept called for a discounted payoff sale transaction that

was similar to the current transaction structure but without the auction component. While this new proposal was a substantial improvement on the offers that had been discussed previously, LBHI believed that it was important to test the transaction in the market to insure that LBHI was receiving the highest recovery possible.

Accordingly, Mr. Fitts would testify that LBHI insisted that any proposed transaction include a thorough marketing process that would subject the L&L transaction to higher offers. The borrowers were very reluctant to include this additional step in the sale process because they were concerned about the affect it might have on their ability to close the transaction with L&L.

After lengthy negotiations, the parties eventually agreed upon the sale process including the auction as set forth in the settlement agreement. Mr. Fitts would testify that the settlement agreement provides for L&L to serve as a stalking horse bidder for the property with an initial bid price of 161.5 million plus transfer taxes and any carry costs that LBHI has incurred with respect to the property for 2011. 142.5 million of the sale proceeds plus the carry costs will be allocated to LBHI and nineteen million will be allocated to the borrowers.

To the extent that the auction results in proceeds in excess of the 164 million dollar floor price, such proceeds

will be divided equally between LBHI and the borrowers. The borrower has retained Eastdale to market the property and conduct the auction. If the property is sold to L&L or a competing bidder for up to 164 million, Eastdale will be entitled to a fee of 200,000 dollars which will be paid from the proceeds otherwise payable to Lehman.

In the event that the proceeds exceed the floor amount, Eastdale will be entitled to an additional fee of six percent of such excess which shall be borne equally by Lehman and the borrower. Additionally, Mr. Fitts would testify that the parties will provide each other with certain releases and the borrowers will withdraw their proofs of claim which have a face amount of more than 126 million dollars.

Mr. Fitts would testify that in the event that L&L does not close the proposed transaction, the borrowers are obligated under the settlement agreement either to step into L&L's shoes as the purchaser of the property on the terms set forth in the purchase agreement or cooperate with LBHI in effectuating a deal in lieu transaction, pursuant to which LBI would become the owner of the property.

Excuse me one second, Your Honor.

Mr. Fitts would testify that in connection with the execution of the settlement agreement, the parties have placed executed copies of all the releases and transfer documents into escrow so that there is virtually no execution risk for the

debtors in connection with the transaction. LBHI will either receive at least 142.3 million plus carry costs or it will receive title to the property.

Mr. Fitts would testify that the primary virtue of the settlement agreement is that it resolves the disputes between the parties, allowing them to move forward with the consensual sale process that will provide LBHI with the opportunity to either monetize its interest in the property at a market rate or take possession of the property without the necessity of engaging in costly and time-consuming litigation.

Disposing of LBHI's interest in the property pursuant to the settlement agreement has a number of advantages of any of LBHI's alternatives. Mr. Fitts believes that the proceeds LBHI will receive from the transaction either from L&L or a competing bidder represent a very favorable return on LBHI's investment in the property in light of the many issues discussed in the motion in the debtors' reply.

Mr. Fitts believes that the releases and the withdrawal of the proofs of claim are of significant value to LBHI's estate both in terms of relieving LBHI of the effort and expense of litigation and in terms of the gross value of the claims that are being withdrawn or released, some of which may relate to post-petition conduct.

Mr. Fitts is concerned that if a settlement agreement is not approved, LBHI may not be able to achieve a comparable

recovery for its interest in the property. This is primarily due to three reasons; (1) the property is largely vacant and has been gutted and therefore, is subject to physical deterioration at a higher rate than a building that is fully occupied, heated and properly maintained, (2) the volatility that has characterized the real estate market for the past few years has not abated and due to such volatility, there is a reasonable chance that LBHI will not be able to secure a comparable transaction when it comes time to sell, particularly in light of the fact that LBHI will have been forced to incur additional expenses relating to taxes and other carrying costs in the interim in the amount of approximately two million per year and (3) L&L is an unusually motivated buyer in light of the fact that it owns a nearby building and appears to have a tenant lined up for immediate occupancy of a significant portion of the property.

Pursuing the foreclosures would require litigation that would be lengthy and expensive with uncertain results. And at the very least, it would prevent LBHI from taking advantage of the transaction with L&L. Further, if L&L were to acquire title to the property through foreclosure of the senior mezzanine loan, the most likely scenario, it would be required to pay transfer taxes which could be as much as nine million dollars, significantly reducing the ultimate recovery on LBHI's interest in the property and offsetting a major portion of the

nineteen million that would be payable to the borrowers under the settlement agreement.

Mr. Fitts would testify that based in part upon LBHI's experience trying to complete a foreclosure at 25 and 45 Broad Street, foreclosure could take an extended period of time. LBHI commenced state court foreclosure proceedings with respect to such properties on January 22, 2009. Although LBHI has a consent judgment against the borrower and guarantor on 25 Broad, and oral argument on the final judgment against the junior lienholders occurred on February 24, 2011, the Court has not yet ruled.

With respect to 45 Broad, LBHI obtained a judgment of foreclosure on November 29, 2010. LBHI is still waiting for that judgment to be finalized which will enable it to schedule the foreclosure sale on that property.

Mr. Fitts would testify that another benefit of the consensual sale process is that LBHI will be able to leverage the borrowers interest in and familiarity with the property to enhance the sale process. For example, the borrowers have taken the lead in marketing the property, giving tours of the property, negotiating confidentiality agreements with potential purchasers and working with Eastdale to insure that potential purchasers have an opportunity to conduct the necessary diligence.

If the borrowers are not able to close with L&L or

another bidder, the borrowers have agreed to either acquire the property on the same terms L&L offered or convey the property to LBHI pursuant to a deed in lieu of foreclosure, thereby relieving LBHI of the expense and delay attendant to the foreclosures.

With respect to the guarantees executed by Mr. Tessler, Mr. Fitts would testify that in his experience, collecting under such guarantees requires expensive and time consuming litigation. In addition, even if LBHI were to obtain a judgment under one or more of the guarantees, as a practical matter, collecting on such judgments is often very difficult and time consuming.

Mr. Fitts would testify that the proceeds to be realized from the transaction as set forth in the settlement agreement represent a fair and reasonable recovery for LBHI's interest in the property in light of the fact that LBHI repurchased the mortgage loan from Bankhaus for an allocated price of twenty-two million dollars and a settlement agreement provides an opportunity for LBHI to test the market and realize fifty percent of any amount paid by a competing bidder in excess of 164 million.

Accordingly, under any of the scenarios that are contemplated by the settlement agreement, LBHI will recover many multiples of the amount it paid Bankhaus for the mortgage loan. For the foregoing reasons, Mr. Fitts would testify that

as co-head of the real estate group, it is his considered business judgment that entering into the settlement agreement is in the best interest of LBHI's estate and its creditors. He would further testify that he has reached this conclusion based on his participation in the negotiation and sale process, his extensive review of the analysis prepared by Joelle Halperin, Anthony Barsanti and Chad DeMartino, discussions with the debtors and the creditors committee's professionals and his own knowledge of the commercial real estate market in New York.

That concludes Mr. Fitts proffer, Your Honor.

THE COURT: Mr. Fitts is lucky you did that for him. Okay. I think it makes sense to hear from the creditors committee recognizing that much of the proffer was also an argument, that we hear what the committee has to say about the process that led the debtor to its business judgment and presumably also led the committee to support that business judgment. And then hear from the ad hoc committee in connection with its objections and I leave it to Mr. Uzzi and his colleagues as to whether they want to make an argument and then call Mr. Fitts as a witness or whether you wish to call Mr. Fitts as a witness and then make your argument. It's entirely up to you. But first the committee. Oh, apparently not.

MR. PEREZ: I apologize, Your Honor. I got a note that the item behind us had settled and they just wanted to

alert the Court to that if the Court could finds one minute to take it up and they could be excused. It's the fifth item that has been resolved.

THE COURT: What item has settled?

MR. PEREZ: The fifth item. The last item on the docket.

THE COURT: Oh, Goldman Sachs?

MR. PEREZ: Yes.

THE COURT: I was under the impression that it settled even before I walked out on the bench. So it's not big news. I mean it's big news for you but I'm not going to interrupt what we're in the midst of in order to hear those specifics. So you'll just to sit a little longer unless there's an emergency that forces you to leave.

MR. PEREZ: No, Your Honor. We were just going to announce that it was done and we weren't even going to put any specifics on the record.

THE COURT: I appreciate that it's done but I was under the impression that it was done except for some sentences that needed to be written.

MR. PEREZ: We don't need to bother the Court with the sentences today but if you want us to wait, we will.

THE COURT: We're interrupting the proceedings right now to have this conversation. So let's defer any further comment on that until after we complete item four.

MR. O'DONNELL: Your Honor, Dennis O'Donnell, Milbank Tweed, Hadley McCloy on behalf of the committee again. Your Honor, in terms of the process, I mean as indicated in the debtors motion by Ms. Marcus the committee has, as typically been the case, been involved with the evaluation of the transaction for some time. It probably goes back about two years.

And I think what we learned over the course of that process was that this is a group of borrowers that is very contentious, very litigious. There were deals on the table before that went away. And the deal that's on the table now is better. But I mean with that prelude, we came to looking at this transaction knowing that any deal that gone done here was going to be a fragile deal. And with many moving parts.

And I think the main thing that we would say with respect to the current settlement and why it makes sense is that it is a package deal. I think in terms of it's not just the sale of the property and or just the settlement of the claims, it's both. And in order to get one or the other done, all the moving pieces need to work together which I think explains a lot of the components of the deal in terms of the ad hoc committee's objection in particular. The fact that -- you know, clearly there's benefit coming to the estate in terms of at least 142 million dollars. I think their main concern is with respect to what's going to the borrowers. And what we

need to keep in mind there is it's going to the borrowers for several different reasons, not one particular reason. I mean it's going to them potentially in settlement of claims we can talk more about which are out there that could be litigated for some time. It's going to them perhaps in their capacity as the party that brought the stalking horse bidder to the table. It's also going to them in their capacity as the backstop for this deal. To the extent this deal goes away, the agreement provides for them to either do the same deal or to do a deal in foreclosure. So there's multiple forms of consideration coming back from the borrower in exchange for the nineteen million dollars and the fifty-fifty sharing in the proceeds of anything above the stalking horse bid.

So when the committee looked at it, we looked at it from that perspective and we looked at it more than once. I mean we looked at it when it was first proffered. We actually went back to the committee after the ad hoc committee objected and went over it again, reached the same conclusion. And under the unique circumstances of this case, the fact that there was more going to the borrower than people would otherwise have liked to have seen to be the case, made sense.

And some of the reasons that it made sense is, Ms. Marcus covered in great detail, had to do with the risks of litigation. There is not a whole lot in the papers about those risks and those risks, I guess are still to be developed

because there isn't pending litigation but based on what we know about the borrowers and their conduct over the past two years, based on what we know about their resources and their predisposition to litigate, we believe that that would be a significant litigation that would likely track what was recited in the proffer as the situation with respect to the 25, 45 Broad.

In that case, we have a borrower that's all but insolvent and we've been stuck for the past two years trying to get to closure on a foreclosure litigation at great expense both in terms of litigation expenses and just interim operating expenses which again were referred to in the proffer. That's number one.

Number two, in terms of the risks of delay, I think the ad hoc group assumes that if we wait, the price will go up but that's not something that we know or can guess at this point. The price may well go up but it may not. And simply waiting it out while we run the risks of the litigation in the hopes that two years from now the property could be worth more and someone would be willing to bid on that property at a higher price with the overhang of the litigation still out there, I think is largely speculation. And this is, we believe, ultimately a unique opportunity.

The other factor here that L&L as the stalking horse bidder, we also believe is uniquely motivated. They have space

in the adjoining building, 205th and we understand that they may be able to or may be in a position to rent significant blocks of space in both that building and this building. So they are motivated both to be at the table with the stalking horse bid and after -- you know, in the context of the auction, to bid it up if necessary.

So for all those reasons, we concur in the debtors' business judgment here and it is a question of business judgment. We don't totally dismiss the ad hoc committee's concerns. I mean there are -- at first blush without having spent two years with this situation, the numbers don't add up the way people might want them to add up but in light of all of these considerations, we believe it does constitute a sound exercise of the debtors' business judgment and should be approved by the Court.

MR. UZZI: Your Honor, I think it makes sense that I question the witness first and then I think it will make the argument a little bit easier and streamlined.

THE COURT: We'll see what the answers are.

MR. UZZI: Right.

THE COURT: Mr. Fitts?

(Witness Sworn)

??CROSS-EXAMINATION

BY MR. UZZI:

Q. Good morning, Mr. Fitts.

A. Good morning.
Q. My name is Gerard Uzzi. I'm with the law firm of White & Case. I represent the ad hoc group of Lehman Brothers creditors. I'm just going to ask you a few questions this morning about the motion, about the affidavit that was submitted, your affidavit that was submitted in connection with the motion and the proffer of your testimony by Ms. Marcus this morning.
Just as a very initial matter, are you familiar with the contents of the motion?
A. Yes.
Q. The motion references four proofs of claims filed by the borrower and the guarantor. Are you familiar with the proofs of claim that I'm referring to?
A. I am. I knew there were -- I'm most familiar with three of them because I think each of the three mortgage borrowers and mezz borrowers submitted a forty million dollar claim and I think there was a third -- sorry, a fourth six million dollar claim. Is that --
Q. Yes.
A. I mean you have that; correct?
Q. Yes, thank you, Mr. Fitts. So in total then there's four claims you said, three at forty million and one at six --
A. Uh-hum.
Q. -- for a total of 126 million dollars; is that correct?

A. I believe that's correct; yes.
Q. Are any of the claims asserted, do you know whether any of the claims asserted are duplicative claims?
A. I think an argument could be made that they're duplicative. I couldn't tell you, as not a lawyer, as to whether they are duplicative or not. I mean the question I think would be, again as a non-lawyer, whether each of those individual borrowers had a separate and distinct forty million dollar claim in this case.
Q. Well, when you exercised your business judgment in coming to this settlement, did you consider whether any of the claims might be duplicative claims?
A. Yes, I did.
Q. And so although 126 million has been asserted, it could be less than that?
A. Yes, absolutely.
Q. What was your assumption as to the worst case scenario should the claimants prevail?
MS. MARCUS: Objection, Your Honor. I'm not sure that that question is clear.
MR. UZZI: All right.
THE COURT: I think there's a request that you maybe rephrase that.
MR. UZZI: That's fine, Your Honor.
Q. What was your assumption as to if the claimants prevailed

on the claims that they asserted in their proofs of claim, the liability that Lehman might be exposed to?

A. My assumption again -- how do I explain this? In a worst case scenario, we viewed a potential liability associated with the claims, something less than what the claimants had put forth but still tens of millions of dollars, as a claim matter.

Q. So, tens of millions of dollars. And I understand in your testimony, in your affidavit, and I believe in your proffer also that you don't believe that LBI -- that any of the Lehman estates, LBHI, is actually liable under any of the proofs of claim; is that correct?

A. I think what we've said is that there is risk in any litigation and certainly there are facts that have been alleged by the mortgage borrowers that could give rise to liability amongst the estate.

Q. But you believe that the estate would prevail, if that was litigated to resolution.

A. I think there's certainly a chance the estate would prevail. I'm not in a position to guarantee that the estate would prevail at the end of a litigation.

Q. Do you know the nature of the claims asserted under the proofs of claims?

A. I know one of the primary assertions is liability associated with a failure to fund by the Lehman estate.

Q. The lender liability?

A. I think it's lender liability that comes from that action or in this case, inaction.
Q. Did you consider if the claimants were successful in establishing their claims, the currency they would receive as a consequence of being successful?
A. Yes, I did.
Q. And what was your assumption?
A. My assumption was that they would end up with a claim that would be in one of two categories, either a prepetition claim or a post-petition claim depending on when it was held that that liability existed.
Q. Now has Lehman objected to the claims?
A. I don't believe that we have.
Q. Lehman has commenced foreclosure proceedings; is that correct?
A. Two of them actually, I believe.
Q. Yes. And the borrowers are contesting those foreclosure proceeding?
A. I believe so.
Q. Did you ever consider whether an order from this court expunging the claims would have an effect on the borrowers' ability to contest those proceedings?
A. I can tell you in two years, we have considered every possible scenario related to this workout. I am sure that in those two years, we considered that as a potential option. I

couldn't give you chapter and verse on the date that we considered that but I am sure that was one of the considerations that we've had in many, many discussions around this credit.

Q. What's your projected costs of pursuing the foreclosure action?

A. As I think we've talked about with your clients prior to this hearing, our view was that the best foreclosure action for the estate, had we pursued that route would have been the mezz foreclosure rather than the mortgage foreclosure, some of which comes from my proffer on the 25 and 45 Broad.

In that discussion that we had prior to this hearing, I think what we indicated was that we thought the mezz foreclosure was a twelve to eighteen month process and that in our rough estimate, that was a five plus million dollar litigation cost over the next twelve to eighteen months.

Q. All right. I'm just going to shift gears. You plan to auction the property; is that correct?

A. I think actually the mortgage borrower is auctioning the property.

Q. The property is going to be auctioned.

A. Correct.

Q. And has any parties expressed interest in participating in the auction?

A. I believe a number of parties have reached out to Eastdale

as the marketing agent expressing interest in the property.
Q. And are you optimistic that an active auction will actually occur?
A. I think there is a reasonable chance that we will have an auction over and above the minimum 164 million dollar bid. Certainly there are a lot of parties talking about. As you may know from this, talking about it is free. Showing up to an auction with a check is a different item.
Q. LBHI has another asset here that's the subject of the motion and those are claims against Mr. Tessler under the guarantee; is that correct?
A. Correct.
Q. Do you know how much of the current liabilities are guaranteed?
A. I believe there are three different guarantees that Mr. Tessler has and I'm doing this strictly off of memory; one is completion, one is carry, one is recourse in the event of bad boy acts.
Q. So is it your understanding that a significant amount of the costs that you're trying to avoid by doing this transaction would be subject to indemnification by Mr. Tessler?
A. As I considered this settlement, we certainly considered that that was an argument that we could make.
Q. Does Lehman need cash?
A. I don't believe that the estate is cash-constrained.

Q. All right. What is the cash that Lehman holds today earning?
A. I believe it something less than fifty basis points.
Q. With respect to the property, there were some references to the carry costs?
A. Yes.
Q. So you understand what I mean by that term?
A. Yes.
Q. What has the carry cost been or what do you project -- let me rephrase that -- what do you project the carry cost to be for the next twelve months?
A. I believe it was in my proffer as approximately two million dollars a year.
Q. Thank you. Just a few more questions.
A. Sure.
Q. Actually, it was in your proffer that you've been working on a transaction I believe for this property since April 2010; is that correct?
A. Correct.
Q. So over a year?
A. Yes.
Q. And I think it's in your proffer also that the borrower and the guarantor have been impediments to getting a transaction done?
A. At times during the process, they have been impediments

and I think again in my proffer we indicated that at a point of impasse in the negotiations, we chose to file the mezz foreclosure. That sort of speaks to impediments along the way. I wouldn't call it impediments on each and every day. Some days are better than others.

Q. Well, would you characterize them as litigious?

A. I think that is a relatively fair characterization.

Q. Would you characterize them as difficult to work with?

A. No, I would say they're no more difficult than anybody else who is in a difficult situation.

Q. Okay. Thank you.

MR. UZZI: Your Honor, that's all my questions.

THE COURT: All right. Is there any redirect?

MS. MARCUS: No, Your Honor.

THE COURT: Mr. Fitts, you're excused. Thank you.

(Witness excused.)

MR. UZZI: May I proceed?

THE COURT: Please.

MR. UZZI: Your Honor, what we believe this comes down when we just boil it down to its very basic facts or the basic question here is whether the debtors are receiving sufficient value for the payments that they're making to the borrower. And I would like to walk the Court through how we analyze that at least based upon the record that was presented.

We first looked at the asset sale part of this. We

understand, we have a buyer that is willing to pay a certain price. The debtors contend that this buyer presents a unique opportunity and maybe is particularly motivated to buy this asset because the buyer has interests nearby and maybe has a tenant in tow and we understand that, Your Honor.

But we also understand that other parties have expressed interest in acquiring this asset and there is an expectation or at least a reasonable belief that an active auction will get going here.

So when we look at that, we think that that suggests at least, that there's not a premium in the purchase price for this asset. Instead, that the stalking horse is at or near fair market value. And that's the only thing we have to go on in the record, as far as value for this property.

So we question whether from just based upon a purchase price basis, whether there's a compelling reason to do this particular transaction now because it appears as if it's a fair market value transaction inclusive of what has to be paid to the borrower.

We next considered whether there was some other compelling reason to sell this asset now. Now there's no evidence that this is a wasting asset. And as the creditors committee indicate in their statement, it appears that real estate prices have turned the corner. I understand nobody can predict the future, Your Honor and we're not predicting the

future. If I could, I wouldn't be standing here right now.

THE COURT: Where would you be?

MR. UZZI: I'd probably be in Key West. But there's no evidence that it's going down either. As a consequence, when we look at the asset monetization standpoint of this, we just don't see a justification for the estate to pay amounts over to the borrower, merely to facilitate this transaction. So we looked for something else.

We considered what the debtors are actually getting from the borrowers. The debtors are getting releases from claims for lender liability. Now I appreciate the debtors sensitivities and I've tried to be sensitive in my questioning to the witness as to opining on the exposure there but there are claims for lender liability, claims for a failure to fund a prepetition commitment. That's at least what we've been led to believe. And those claims have been filed with this court.

Under the debtors' current proposed plan, a nineteen million dollar payment which is the minimum that the borrowers will receive out of this, equates to a distribution of a claim that equal to ninety-five million dollar, a general unsecured claim equal to ninety-five million dollars.

The borrower takes fifty percent of the upside and there's an expectation that this assets going to get bid up, so that equivalent claim amount goes up pretty quickly. It doesn't take very much. In fact, the borrower may be here. In

fact, the testimony is for purposes of the analysis, they assume tens of millions of dollars of exposure on this claim. Well, this is a ninety-five million dollar claim. This is a payoff of a ninety-five million dollar claim. If we assume that all of it's going to that and if we assume that it's not bid up and if it's bid up, it's even more than that, that's really I think where the crux of our issue is.

Now do understand, Your Honor, that the analysis is not that linear. We understand there's offsetting costs but there's also the guarantees. And we are releasing -- or the estate, I should say, is releasing guarantees against Mr. Tessler that would not only indemnify the estate for these costs but we believe also indemnify the debtors for the borrowed money. So the estate's walking away from an awful lot here.

So, we come back to the initial question as to whether we believe the debtors are receiving sufficient value for the payments they are making and just based upon this record, Your Honor, we just believe the answer is no. We don't believe the record supports that there's a premium that's being derived from this asset sale. In fact, we think the record supports that the asset sale is at fair market value. We don't believe there's any other compelling justifications that have been established to sell the asset now.

Importantly, there's -- Your Honor, we recognize that

the dollars involved here, the nineteen million dollars which is what we principally have an issue with, is relatively small in the context of the big picture of this case. So we struggled over whether it was worth our time and frankly whether it was worth your court's time to even rise on this. And we concluded it was because of two reasons, Your Honor. We're concerned about the type of precedent that this request sets. While this is a relatively small transaction, it doesn't take many similar types of transactions for it to become meaningful.

So nineteen million dollars is a meaningful sum of money in the context of this case, not such a meaningful sum of money but there are thousands of transactions that's coming through this court, it can become meaningful.

More importantly, there's a lot of big transactions that come through this court on motion practice and appropriately so, but they are big transactions. And we think this type of payment, the reasons why they're being paid, because of the litigation on the foreclosure action, it's just not supported here, Your Honor.

Now interestingly, Your Honor, before this hearing somebody asked me with respect to the objections, and you know my coming in guns ablazing, I didn't think our objection was a guns ablazing objection. It certainly wasn't intended to be. We're not criticizing the debtors and we're certainly not

criticizing Mr. Fitts with respect to their efforts to get something done here. We, as Mr. Fitts had noted on the record, he's very accommodating to us and our clients with respect to questions we had. We understand he's working very hard and that he also has a lot on his plate.

It's simple; we just think a mistake has been made here. Mistakes get made sometimes. We just don't think the record supports this transaction and we would ask the Court deny the motion.

Your Honor, unless you have questions for me, I don't have anything else to add.

THE COURT: Does the ad hoc committee have a collective opinion based upon consultation with financial advisors or market experts as to what alternative would be more appropriate for dealing with this property?

MR. UZZI: Yes, Your Honor. Based upon -- the members of my steering committee have all their own internal ability to analyze the situation. They too expect that the asset is going to be bid up based upon their own internal analysis. So they think there's more upside in this asset.

They don't believe the asset value is going to go down and I would say they're probably bullish on asset values going forward. Now people were bullish in the past and got that wrong, too, so that's just their view. They think the better course of action right now is to proceed with the foreclosure

action. We don't think the cost of it is going to be five million dollars. We think that's kind of high. But even at five million dollars to proceed with the foreclosure action, we think with the risk/reward, if there's thirty million dollars, maybe forty million dollars of upside, pay the five million dollars. That's what we recommend, Your Honor.

THE COURT: Thank you.

MR. UZZI: Thank you.

MS. MARCUS: Very briefly, Your Honor, just a couple of points. The first I think is the fundamental issue. The ad hocs reference the fact that they think that the property will be bid up at the auction. They're not focusing on the fact that if we don't have this settlement approved, there is no auction. There will not be an auction on June 29 and whatever interest there is in the property right now again as we've noted, we don't know if that interest will be there whenever the foreclosure is concluded.

Secondly, in terms of the nineteen million that's going to the borrowers, I just wanted to emphasize, Your Honor, that the L&L purchaser is paying the transfer taxes which we estimate could be as much as nine million dollars. If the transaction doesn't go forward and we foreclose on the property, the Lehman estate will have to bear that nine million dollar cost. So it's really not fair to look at it as nineteen million dollars. I think it's more appropriate to look at it

as ten million dollars. Sorry about that.

And thirdly, Your Honor, the fundamental issue here is that the test that the Court is to apply based on the precedent in this circuit and others is whether this settlement is a reasonable settlement and whether the debtors have satisfied the business judgment standard.

We believe that the record does support the fact that the settlement is reasonable and that the debtors should be authorized to proceed with the settlement. The debtors believe that the relief requested in the motion is in the best interest of the debtors and their creditors and accordingly, we request that the Court approve the proposed settlement agreement.

THE COURT: Okay. Anything more from the committee?

MR. O'DONNELL: Your Honor, just one point. On the precedent this may set, I think we find it hard to credit that allegation because we look at each transaction on its merits and what happened in this transaction is unique to this transaction. We don't believe there are a lot of other situations out there that will require a transaction structured like this. But we will look at the next one with fresh eyes and evaluate it from that perspective and not allow the debtors to pursue something solely based on this precedent.

THE COURT: All right. Thank you. I'm granting the debtors motion and overruling the objection of the ad hoc committee but I'll note that looking at the ad hoc group's

limited objection in preparation for the hearing, I came to the conclusion that a number of reasonable arguments were being made raising questions as to whether or not this was the right business decision and, in effect, what has been the subject of this morning's contested hearing amounts to a review of business judgment that is subject to different opinions.

That's the nature of business judgment and every trade made in the market is made at a time when somebody thinks it's a good time to sell and somebody else thinks it's a good time to buy. And both may be right, as a matter of fact.

Here, as I understand the evidence which is for all practical purposes uncontroverted because Mr. Uzzi's questions really don't undermine the judgments reflected in the proffer of Mr. Fitts' testimony nor does it undermine the pleadings filed by the estate and the creditors committee. I don't mean to minimize the significance of what's going on here but this is a garden variety real estate workout, something familiar to probably every lawyer in the room. And it is not uncommon in such circumstances for those who control the property to be offered certain incentives to cooperate. In effect, that's what I see here.

And I fully appreciate the fact that third-parties who are not directly involved in the negotiations could come to the conclusion that a better alternative to peace is war. And that, in effect, is what the ad hoc committee is telling me.

In response to my question, Mr. Uzzi indicated that in effect the sophisticated business people who are his clients wouldn't make this deal and instead would choose to litigate, take control of the property and in effect assume the costs of going forward in a litigation. The debtors and the creditors committee obviously disagree and think that the transaction that's before the Court is a rational one that makes sense under the present circumstances and that particularly with L&L in the picture, that there is a highly motivated buyer. And having invested the time and the effort to get us to this point, they urge that I endorse their business judgment and I do.

I also note and Mr. Uzzi in his remarks notes this as well, that in the context of the Lehman bankruptcy case which is long in real estate assets, this particular transaction is unremarkable. The fact that we have spent as much time assessing this proposed transaction is a demonstration that the parties-in-interest in this bankruptcy case are paying close attention to transactions large and small and as noted in Mr. O'Donnell's comments, there is some concern about precedential impact of transactions and how approving one may be viewed as a paradigm for others. I don't view this as a paradigm for anything other than this particular property, this particular guarantor and this particular opportunity to monetize an asset. It's approved and the objection is overruled.

MS. MARCUS: Thank you, Your Honor. That completes our agenda for today.

THE COURT: Well, there is this --

MS. MARCUS: Oh, I'm sorry.

THE COURT: There is this Goldman Sachs --

MS. MARCUS: I've forgotten.

THE COURT: -- this Goldman Sachs issue and are you going to come forward and put something on the record?

MR. HARWOOD: Good morning, Your Honor. Michael Harwood from Kasowitz, Benson, Torres & Friedman for the debtors on this matter. I apologize for the interruption before.

THE COURT: No problem.

MR. HARWOOD: We have resolved the matter involved in the motion to compel between us and Goldman Sachs. The parties have agreed to a particular schedule and a date certain for production of the materials that we had requested in that we've agreed to and have agreed to reserve and preserve all rights as between us, so that that time period will not affect any parties' interests. The parties are back at the office putting that into writing in a stipulation. And that will be, I expect, filed with the Court by the end of the day today.

THE COURT: And you'll be looking for that to be so-ordered?

MR. HARWOOD: Yes, Your Honor.

THE COURT: All right. Fine.

MR. HARWOOD: Thank you very much.

THE COURT: Thank you. I think that concludes the morning calendar. We're adjourned until 2 p.m.

MS. MARCUS: Thank you, Your Honor.

THE COURT: Thank you.

(Recess from 11:43 a.m. to 2:05 p.m.)

THE COURT: Be seated please. Good afternoon. Mr. Slack, how are you?

MR. SLACK: Very well, Your Honor. Your Honor, this afternoon we are here for a case conference. The first matter on the docket is a case conference in the Ballyrock matter. Your Honor, after you issued your opinion, I am happy to report that the debtors have talked to defense counsel and have reached agreement on essentially two orders that are designed to, subject obviously to your approval, to be entered at the same time.

MR. SLACK: The first, Your Honor, is an order which effectively is an order designed to deal with the motion to dismiss that you granted in part and denied in part. And the other is a scheduling order, again which is designed to go along with it. A couple of words on the scheduling order.

It was debtors' view that the action should proceed now as a normal action and the first step, Your Honor, that we anticipate is filing an amended complaint. So we propose that

to the defendants. We proposed it, in fact, as part of the order denying the motion and granting the motion in part. We've since worked out this solution where we have an agreement to allow the debtors to file an amended complaint. That would be in the next twenty-one days. The defendants would then have twenty-one days to respond, move, answer or otherwise respond to that complaint. If they answered, Your Honor, my expectation is we'd work out a discovery schedule at that point and be back here if they move. My expectation is we'll work out a briefing schedule and have that.

The other piece to that, Your Honor, is that the defendants have indicated a desire to seek an interlocutory appeal of Your Honor's opinion and what's built into the scheduling order is the ability for them to file that motion, I think it's within fourteen days of us filing the amended complaint. And there's a timing issue under the rules for that, Your Honor, which is why -- part of the reason why these orders are meant to be executed by Your Honor if you agree with them at the same time.

THE COURT: Tell me about the timing.

MR. SLACK: Why --

THE COURT: What's the timing issue?

MR. SLACK: The timing issue is that I think under the rules, there can be an extension of twenty-one days from -- of the period to file a motion seeking interlocutory appeal. So

what that would mean is that if you sort of do the math and you give us twenty-one days to file an amended complaint, and then I think the way the stipulation says is that or that the joint motion is that they have fourteen days after that in order to file their interlocutory appeal. It works out to the thirty-five days that I think they have under the rules to do that.

THE COURT: Okay.

MR. SLACK: And that would key off of your order granting in part and denying in part, the motion to dismiss.

THE COURT: Okay. Not that I am asking anybody to reveal litigation strategy but is it likely that that will be a controverted motion for interlocutory appeal or is that something that's going to go forward on a consensual basis?

MR. SLACK: No, Your Honor, we believe that, and we haven't talked to the defendants about it but we don't believe that an interlocutory appeal is proper. So we would expect there to be motion practice on that before the appeal would be either granted or not granted by the district court.

THE COURT: My immediate reaction to this is this sounds like a good news/bad news presentation. The good news is that you are working cooperatively with your adversaries in developing a set of parallel orders that will accomplish the litigation objectives of the parties in the short term but the bad news is that this creates a whole host of potentially time consuming and expensive litigation frolics and detours. And

I'm not really particularly excited about that, not that I have any control over what parties choose to do. I'm particularly disappointed in light of the fact that prior to the issuance of the memorandum decision, I was aware based on telephonic conferences that at least the parties were endeavoring to talk about a merits settlement.

Is there any potential for the parties to get back to the drawing board of either settlement discussions or perhaps mediation? We spent part of this morning's calendar talking about the success of the debtors' alternative dispute resolution protocols in matters not terribly different from the Ballyrock dispute in terms of the kinds of matters that are going to mediation routinely.

I don't understand why this case is any different from those cases. I stayed a whole bunch of litigation this morning to give peace a chance. Why isn't peace possible here?

MR. SLACK: Well, Your Honor, I would echo I think the comments you just made, at least from the debtors' standpoint. We are prepared to sit down and continue those discussions. I'm not aware of whether those discussions have continued post your decision. I would imagine that the principals have talked because there's a number of matters where the principals have reason to talk. But I'm not aware of any further discussion.

But we would welcome those and we would certainly agree to sit down either in a mediation or outside a mediation.

So we certainly take your comments I think serious and to heart.

THE COURT: Are there parties-in-interest present who would object to proceeding with an alternative dispute resolution approach to this and doing it now?

MR. SLACK: Let me see the --

THE COURT: Well, this is a pretrial conference, so I want to find out whether or not I'm barking down a path of maximum resistance.

MR. LACY: Your Honor, Rob Lacy from Sullivan and Cromwell for Barclays Bank. Barclays is always happy to discuss a settlement and is, in fact, constantly talking about settling a variety of issues with all of these related estates. I have no instructions on this subject. I don't think that there have been any discussions concerning this case since we announced an impasse a couple of weeks before you issued your decision and they don't always tell me what they're talking about, but I haven't heard about anything.

I do think that Barclays would resist anything that slowed down the process of the motion for permission to appeal and, in fact, the rules don't allow the time period for doing that to the extended by more than twenty-one days which we've already asked the Court to do that maximum extension. So that's got to go forward.

THE COURT: Well --

MR. LACY: But we're happy to talk in the meantime, I think.

THE COURT: I think as you know there are cases on the adversary docket in the Lehman case that have gone down the path of appeals to the district court and they have been routinely settled while those appeals have been pending.

MR. LACY: Yes.

THE COURT: Everything from Metavante to Perpetual.

MR. LACY: No, the appeal process actually seems to be a good thing for settlement.

THE COURT: I don't know if it's a good thing for the district court judges but it certainly doesn't affect my life. What does affect my life is the management of cases that I'm responsible for and I'm just concerned about this one, in part because quite a lot of time went by. Part of that was my doing. But it also does not to me seem the least bit exceptional when compared with the portfolio of other cases that are going into ADR.

I don't mean to ask you to comment one way or the other as to whether I am right but Ballyrock to me is of a piece with a whole bunch of other comparable litigation much of which is being settled.

MR. LACY: As Your Honor observed in the NY Corporate Trustee's Services decision which was the basis for your decision in this case, you expected that decision to be

controversial and it was to some degree, new law. And we agree with Your Honor about all of those observations.

So to some degree this proceeding involves more, if you will, sort of novel and untested legal issues than many of the other cases that are being settled.

THE COURT: But Perpetual was settled.

MR. LACY: That's correct.

THE COURT: That case was settled.

MR. LACY: That's correct.

THE COURT: So the fact that the case was for all the reasons that you said and I said in the opinion, unprecedented, didn't impede the ability of parties to reach a result.

MR. LACY: Well, listen, Your Honor, again I emphasize that Barclays is always happy to talk about a settlement and I think it would be happy to do that in any context and under any procedure, except that we do have to have this motion for permission to appeal go ahead under the -- because basically, no one has the power to extend the schedule for doing that.

THE COURT: Okay. Well, to the extent -- I'll hear from everybody else but to the extent that there's a message here which I'm looking for you to react to, it's that I'm perfectly prepared to enter consensual orders that relate to scheduling and that preserve the rights of the parties as it relates to motions for interlocutory appeal, opposition to such motions, briefing schedules, and the like, but I'd like the

parties to at least react to the concept of resolving this case instead of litigating around the edges.

MR. CROWELL: Your Honor, I'm Nick Crowell from Sidley Austin for Black Rock. Like Mr. Lacy's client, my client is always willing to discuss settlement in any context. I'd need to speak to them if they would be willing to go forward with any type of ADR process.

I will say that before your plan was issued, my clients had very little minimal contact with the debtor about settlement despite the representations that were sometimes made on the calls. And the last thing that I had heard from my client was that they were not even in the same ballpark. So I'm not exactly sure that that type of process would work but again, my client would be willing to listen but I do echo Mr. Lacy's comments and I think that the appeal process does need to go forward because of the requirements of the time under the law.

THE COURT: Okay.

MR. DAKIS: Your Honor, Robert Dakis from Quinn Emanuel for the committee. Just to make sure the record is clear on the committee's position, of course the committee would favor settlement discussions through any mechanic, either through the ADR process or outside of the process and we would welcome such discussions. Thank you.

THE COURT: Okay. I really started something here,

didn't I? Yet another speaker.

MR. HOWARD: I'll be brief, Your Honor. Good afternoon. Casey Howard from Locke Lord on behalf of Wells Fargo as trustee. Obviously, we don't oppose settlement. I appear really for the point of just drawing to the attention of the Court, as well as debtors' counsel that to the extent that they wish to amend the complaint, I've spoken with some of Mr. Slack's colleagues and it's unclear as to whether or not they intend to allege new claims against Wells Fargo as trustee. We, of course, rely on the June 3 order of the Court which is a pretty board release and protection against Wells Fargo as trustee for any claims.

THE COURT: okay.

MR. SLACK: So with that, Your Honor, I think from the debtors' standpoint, what I can represent to the Court is that after this conference we will make efforts in contacting all of the parties here and start a process to try to talk. I did hear that everybody was willing to at least sit down and try to do that. So hopefully that will move this process.

THE COURT: It would have been politically incorrect for anyone to have disagreed with the general proposition that I asserted. So the fact that they said yes doesn't necessarily mean that they're earnest in moving forward. I'd like them to be but I can't make that happen.

MR. SLACK: Well, we will I think at least see if

there's a possibility of doing that. In the meantime, Your Honor, we will submit to Your Honor the orders and I guess I leave it to Your Honor as to when to enter them in the sense that once Your Honor enters them, I think under the orders, there's going to be a thirty-five day period for the defendants to file their interlocutory appeal. So that's the timing issue, I think from their standpoint under the orders we're going to submit once you sign the order on the motion to dismiss.

And so with that, Your Honor, unless there's anything else you would like to ask the parties who are collected, I think that's where we are.

THE COURT: Okay. And those orders are drafted to the satisfaction of counsel at this point and they're ready for submission?

MR. SLACK: They are and we should be able to submit them, I would expect this afternoon but maybe first thing in the morning at the latest.

THE COURT: And do the parties have any prospective on the most propitious timing for the entry of those orders? Is it the view that they should be entered as promptly as practicable or is there any view that there might be some value in avoiding the ancillary litigation expense by sitting down right away?

MR. SLACK: Well, I think Your Honor hit it on the

nose earlier which is we will go back and immediately reach out and try to start this process and given that there's been at least some representations that people are willing to sit down and talk, I would say from the debtors' standpoint, you know, not having the expense of going through multiple motions doing amendments, would be a benefit to the estate. So from the debtors' standpoint, holding off for some amount of time I think would be appropriate but I can only speak from the debtors' standpoint.

THE COURT: One of the things about this case, I am going to pre-empt Mr. Lacy's remarks, I can almost anticipate what he's going to say; I may be wrong but I am going to take a wild stab at this, the parties endeavored prior to the issuance of the Court's order and decision to try to resolve their differences with what I assume was a reasonable expectation as to the general contours of what that decision might look like. And despite the investment of some significant time, although I have no idea how much effort actually went into it, the process was not a successful one.

I contrast this case with Harrier, not that the cases are the same, they were argued on the same day, and Harrier resulted in a settlement. So hope spring's eternal that maybe a settlement is possible here. But I am not going to delay the enter of the orders in part because I delayed the entry of the memorandum decision in order to encourage the parties to reach

a settlement. I also needed the time to separate the Harrier decision from the Ballyrock decision because they were co-joined in almost every way.

So for that reason, I'll enter the orders in the ordinary course probably before the end of the week, it might be early next week. And I encourage the parties to engage one another in a good faith effort to try to resolve this either with or without the involvement of a skilled mediator.

It seems to me, however, that given the history of the discussions to date, that the parties might be aided in the process of discussing these issues by having a mediator familiar with the derivatives book at Lehman to act as a facilitator and I encourage that but I'm not ordering it at this moment. The parties are sophisticated here and can plot their own destinies as well as anybody. So I'll take the orders when you're ready and we'll see what happens next.

MR. SLACK: Thanks, Your Honor.

MR. LACY: Thank you, Your Honor.

MR. WIN: Good afternoon, Your Honor. Zaw Win, Weil Gotshal Manges for the debtors. The next matter on the agenda is the motion of Kathleen Arnold and Timothy Cotten for the Court's determination. Just as a brief preface, the debtors understood from the Court's comments at the May 18 hearing that these matters would all be moved to the July 20 hearing at which time the Court would have an opportunity to discuss or to

decide on subject matter jurisdiction.

THE COURT: That's correct. I mean let me be clear. First of all, let me find out first of all if Kathleen Arnold and Timothy Cotten are on the telephone. I don't see them in the courtroom.

MS. ARNOLD: We are, Judge.

THE COURT: All right.

MS. ARNOLD: We enter our appearance.

THE COURT: At the last hearing, I think I was fairly clear in stating that the expedited motion would in fact not be expedited but will be deferred until after the Court herd on the merits the debtors' motions to dismiss the adversary proceeding. And we spent some time during the last status conference discussing the possibility that the plaintiffs might engage counsel so that they might be better equipped to deal with the sophistication of the legal arguments that they need to address in order to overcome a motion to dismiss based upon subject matter jurisdiction.

So one of my questions for the plaintiffs is whether first, you have made any progress in engaging a lawyer, and second, whether you wish to engage a lawyer. It's ultimately your choice to do that or not do that.

MS. ARNOLD: May we speak now?

THE COURT: Yes, and please speak up because at least I am having some difficulty hearing you and you may not --

MS. ARNOLD: It's terrible, Your Honor, I know.

THE COURT: -- be on the record if you're not picked up by the recording equipment here in court.

MS. ARNOLD: Okay. One moment, sir. I'm just trying to turn this down completely.

(Pause)

MS. ARNOLD: Hello, I am sorry. Yes? Yes, Your Honor, I'm sorry.

THE COURT: Question one is --

MS. ARNOLD: Yes.

THE COURT: -- have you been looking for a lawyer? Question two is do you want a lawyer?

MS. ARNOLD: Yes, we want a lawyer and yes, we have made substantial effort in trying to. We followed up to your -- on your -- I was going to send you over a written report of who we contacted but that's substantial and we're still contacting people as we talk right now. We contacted our local pro bono who sent us to some pro bonos up in New York and other places.

MR. COTTEN: With more time, Your Honor, we do believe we can, you know, get somebody to serve as -- to help us. It's been -- it's just been horrendous dealing with it so far.

MS. ARNOLD: We understand -- we do want to say this officially. We have the utmost appreciation for what lawyers and judges go through. And hearing these cases we understand

that. It's a lot of work. We know that and we do not take anything that we're doing very lightly at all. We spent three days just trying to respond to the brief that we just submitted. I do respect the Court, the judges and the lawyers. I understand how hard this work is. So it's not anything we take lightly.

We are -- we are aware that our rights will be affected by the discharge in reading the debtors proposed plan and that's the other thing, just the voluminous nature of these proceedings, we understand and we know and we are not trying in any way to be frivolous or wasteful or anything. So we want to put that out there.

Yes, we do want a lawyer. We would love to have a lawyer. We've had seven lawyers, Your Honor. In almost seven years we've had seven. Our last lawyer right now is being disbarred. He's in disbarment proceedings in D.C. over defrauding his clients.

THE COURT: Okay. Let me try to cut through and understand what you've just said. And it's difficult because you're not physically present in court and you seem to be --

MS. ARNOLD: I understand, Your Honor.

THE COURT: Just let me finish what I am saying so that we can have as understandable a record as possible. That means that we can only speak one at a time.

I believe that you said that you would like to get a

lawyer and that you need some more time to try to get a lawyer. And that you've had seven lawyers in your --

MS. ARNOLD: Seven years.

THE COURT: -- various litigations that relate to what happened to your home. And that if I gave you some more time, you would continue the process of looking for a lawyer. Did I understand all that correctly?

MS. ARNOLD: You did, Your Honor.

THE COURT: All right. How much time -- first of all, I'm in no hurry on this. I don't even know if the debtors are in a hurry on this. One of the things that is bothering me and you should know, is that there are perhaps twenty people in the courtroom right now and they are not here necessarily to listen to this. They're here on other matters that are on the afternoon docket.

Based upon the complaint that you have lodged, and based upon the motion to dismiss, it seems apparent to me that you have brought claims against Lehman Brothers Holdings Inc. that Lehman Brothers Holdings Inc. as a separate entity has no liability for, even if you're right. And that's the problem.

The problem is that you've made claims that relate to whether they're correct or incorrect, a subsidiary of Lehman Brothers Holdings Inc. that is not a debtor before me. For that reason, I am likely to dismiss your complaint. I'm not saying I've made the decision to do that but at the last

hearing in May, a similar matter was before the Court that involved some claims against Aurora. I entered a motion to dismiss that.

MS. ARNOLD: What is the case, Your Honor, please?

THE COURT: I can't do legal research for you.

MS. ARNOLD: I'm not asking you --

THE COURT: I'm simply telling you that at the last hearing --

MS. ARNOLD: No, no.

THE COURT: -- on May 18, one of the matters that was before me was an adversary proceeding. There was a motion to dismiss brought. I granted the motion to dismiss. Now while the facts are entirely different, the legal principle is the same. I do not adjudicate claims against non-debtors. I only deal with matters that arise out of or relate to the bankruptcy cases that are assigned to me. And I believe as a result, that it is highly likely even if you have a lawyer, that I will dismiss your case, unless you can show me and I don't know that you're going to be able to , that your claims somehow are properly asserted against the ultimate parent.

There are substantial issues in this bankruptcy case that go to the questions of whether or not these debtors before me should be administered separately or on a consolidated basis. It's one of the most fundamental questions in the case. It is not going to be decided in your adversary proceeding.

And at this moment --

MS. ARNOLD: It's not -- that's not --

THE COURT: Excuse me. I'm not quite done. At this moment, on its face it appears that you are not entitled to relief. I recognize that you feel aggrieved. I recognize that you have litigated these issues for many years both in the state court and in the federal district court and at the appellate level, but that doesn't give you a right to be here.

And so while I am not deciding the question now, I'm giving you comments in much the same way that I gave comments to the lawyers who appeared in the case just before yours. The principle comment is please find a lawyer who can tell you whether or not you have a basis to proceed because I believe you are wasting your time and I believe you are wasting the Court's time.

MS. ARNOLD: I mean I -- obviously I don't agree with that. I just like I said --

THE COURT: Well --

MS. ARNOLD: I respect Your Honor's --

THE COURT: -- you don't have to agree with me but you have to get a lawyer who can explain this to you.

MS. ARNOLD: We are trying to do that, Your Honor.

THE COURT: And we are not going to hear this today. And we're not going to hear this on July 20 either because you need to find a lawyer and if you can't find one, there will be

a hearing. You will be physically present. You will have filed papers in response to the motion to dismiss. You will try to explain as best you can why you believe that the complaint that you have filed against Lehman Brothers Holdings Inc. is a complaint that belongs before me in New York.

MS. ARNOLD: Thank you, Your Honor.

THE COURT: Okay?

MS. ARNOLD: Thank you.

THE COURT: So what I suggest is that you have a conversation relating to scheduling. I am in effect adjusting the oral order that I entered last time which listed this for hearing on July 20, giving you more time to find a lawyer and encouraging you to work out a date by which you will either file papers in opposition to the motion to dismiss or the motion to dismiss will be deemed unopposed. And if it unopposed, I will grant it.

MS. ARNOLD: Okay. So we have to agree on a date that will be --

THE COURT: Either that or I will tell --

MS. ARNOLD: -- sufficient date --

THE COURT: Can you agree to things with counsel because I have done this -- I did this last time, as well.

MS. ARNOLD: No, Your Honor, I understand. No, I --

THE COURT: Let me explain something. Due process involves predictability, schedules that people comply with,

fair notice to your adversary, and an opportunity before an unbiased tribunal to be heard. You're going to have that right but that means answering the motion to dismiss and you're either going to do that on your own or you're going to do it with a lawyer. Or you're going to choose not to do it.

If you do it on your own, because you're doing it without a lawyer, it will be by a date that either I set or that you agree to with your adversary. If you can't reach an agreement as to when that will be, I will set the date.

MR. COTTEN: That's perfectly acceptable. Thank you, sir.

THE COURT: Can't hear you.

MR. COTTEN: I said perfectly acceptable.

THE COURT: Fine. Okay.

MR. WIN: Could I ask a quick question?

THE COURT: Sure.

MR. WIN: Just so we're totally clear, so the only matter that will be on at that hearing is the debtors' motion to dismiss.

THE COURT: Yes.

MR. WIN: Okay.

THE COURT: And that's consistent with what I said last month.

MR. WIN: Thank you, Your Honor.

THE COURT: All right. We'll move on to the next one.

MS. LEMMER: There are three related matters; Turnberry, Lehman Brothers v. J. Soffer and another one, Lehman v. J. Soffer. I'll take appearances.

MS. LEMMER: Good afternoon, Your Honor. Elisa Lemmer from Weil Gotshal & Manges on behalf of the debtors. Just as a housekeeping matter, a pro hac vice motion was filed by one of my colleagues on my behalf yesterday afternoon. I checked the docket this morning, an order entering the pro hac vice motion has not been entered as of when I checked it. So if you would orally --

THE COURT: We'll consider you admitted.

MS. LEMMER: Thank you, Your Honor. The motions that are before the Court are not our motions. They're motions filed by Turnberry and Ms. Soffer. I am happy to present but because they're the movants, I'm happy to cede the podium to them and respond accordingly, as well.

THE COURT: Well let me first take appearances.

MR. RICHARD: My name, Your Honor, is Dennis Richard the law firm is Richard & Richard. I am here as the attorney for Mr. Jeffrey Soffer.

MR. BLUMENTHAL: Good afternoon, Your Honor. Elliot Blumenthal from Buchannan Ingersoll & Rooney, here on behalf of the Turnberry entities, Jacqueline Soffer, as well as Jeffrey Soffer.

MR. ROMINE: Good afternoon, Your Honor. Mario A.

Romine. I'm here on behalf of Fontainebleau Resorts, LLC.

THE COURT: I couldn't hear you.

MR. ROMINE: I'm here on behalf of Fontainebleau Resorts, LLC.

THE COURT: Okay.

MR. COHEN: Good afternoon, Your Honor. David Cohen, Milbank Tweed Hadley & McCloy here on behalf of the official committee of unsecured creditors.

MR. RICHARD: One clarification, Your Honor. I also represent Jackie Soffer and Mr. Romine also put in pro hac vice papers yesterday that had not yet been acted on.

THE COURT: Okay. Everybody who has pending pro hac vice papers will be deemed admitted for the purposes of today's argument. And since I've never denied such an application, I'm very confident that you will be actually admitted.

Now what's the order of play here?

MR. RICHARD: Of the three related cases, the three motions, we've reached agreement on two of them which encases 2821 and 2823 in which we've agreed to withdraw those motions and file answers to those complaints on August 1. July 31 is a Sunday, so August 1.

THE COURT: Okay. I wish somebody had told me that before I prepared so thoroughly for both of them.

MR. RICHARD: We only reached the agreement just before the hearing, Your Honor. We apologize. And we decided

that the area was gray on those motions at this stage of the proceeding, having analyzed all cases and the lawyers that actually drew those motions are no longer present in 2821 and 2823.

So we are prepared to argue the motion on the cased called the Town Square case, as well call it, with the Town Square entities and Jeffrey Soffer. That's case number 13555. That's the motion to dismiss the four declaratory judgment actions.

THE COURT: Okay. That's the one that involves the Nevada single action rule?

MR. RICHARD: Yes, sir.

THE COURT: All right.

MR. RICHARD: Yes. Shall I begin?

THE COURT: Sure.

MR. RICHARD: The motion involves a single ground for dismissal of Counts One through Four and two rounds for dismissal of Count Four. The single ground that is addressed to all counts, each of which is a declaratory judgment count, alleging a breach of one kind or another that occurred on or before March of 2009; all four counts allege that.

The fourth, the breach, I'm using the word loosely because it's alleging a violation of the automatic stay, Counts One, Two and Three, allege a breach of -- Counts Two and Three, a breach of loan agreements, Count Three an unjust enrichment

prior to March of 2009. All of the events in these DJ actions occurred on or before March of 2009.

The first ground for dismissal of the DJ actions is that the federal DJ Act is not available to adjudicate past breaches or past events. Lehman does not -- the debtor does not dispute this. Instead, the debtor argues and they actually have a sentence that sums up their whole argument on page 4 of their opposition which I quote, "is the uncertainty that surrounds Lehman's right to foreclose on the collateral while at the same time asserting the counterclaims required to defend this action.

And the core of the uncertainty arises out of Nevada's One Action Rule and their argument is that under the One Action Rule, they must foreclose on their collateral before they pursue claims to a monetary judgment. And if they don't do that, if they pursue claims to a monetary judgment, they can forfeit their right to foreclose on the collateral.

THE COURT: Is there anybody in the courtroom who is an expert on the Nevada One Action Rule? Is there a Nevada lawyer in the room?

MR. RICHARD: There is not to my knowledge, Your Honor.

THE COURT: So a bunch of non-Nevada lawyers are arguing to a non-Nevada Judge about the application of the Nevada One Action Rule which I presume is something that Nevada

lawyers know a lot about.

MR. RICHARD: There are practically no annotations to either the Nevada DJ Act which is also an exception to the Nevada One Action Rule or for that matter, the One Action Rule itself. And that doesn't mean that Nevada lawyers wouldn't have more expertise in this area, I would suggest that we have four arguments that we think we could make relating to it regardless of what the Nevada One Action Rule means.

THE COURT: Yes, but you read a sentence from Lehman's papers and I suppose I read that sentence along with all the sentences that surrounded it in preparation for the argument but as I read their papers, they were saying that in order to preserve in a manner that is safe under the One Action Rule of Nevada, claims that would otherwise be styled as monetary damage claims, we've chosen to do that as declaratory judgment claims. And that doing it in this manner is somehow consistent with what would occur in Nevada where practitioners finesse the One Action Rule by styling claims for relief as if they are declaratory judgment claims. Now did I misread that?

MR. RICHARD: I read that into their position as well. However, I believe in Nevada, if Lehman were to have filed this action in Nevada, it would be one action seeking to recover the monetary judgment and to foreclose on the collateral. It would all be in one action.

It's only the division of this -- and it would be in

Nevada obviously that they would have to foreclose on the Nevada collateral. And I would submit that it's only the division of this litigation between two different courts and two different jurisdictions that results in this anomaly.

THE COURT: Well is this thing a purely procedural issue because it seems to me that if in Nevada Lehman could bring a unitary action that would both seek to foreclose and seek a monetary judgment and not violate local practice, that there should be a means to permit the same kind of relief in this adversary proceeding or there may be other means that Nevada lawyers or those familiar with local practice would follow in order to permit a deviation from the One Action Rule, so as not to waive rights.

What I believe has happening in the motion to dismiss is that there's an attempt to wipe out all damage claims under the guise of declaratory judgment claims on the theory that declaratory judgment claims are impermissible. But I also understand that the declaratory judgment claims are product of an amended pleading and that the amendment which was unopposed was designed to get around the One Action Rule.

So what relief are you really seeking? Are you seeking outright dismissal of these claims because that's not going to happen. They're going to have leave to amend.

MR. RICHARD: I understand, Your Honor. The answer is partially implicated with the rest of the argument of the

debtor. The One Action Rule argument is coupled with an argument under Rule 15 of the Federal Rules. That being, that we're required to bring all claims, all claims arising out of the same transaction or occurrence as counterclaims in this case in which my client is the plaintiff.

The problem with the approach they're taking, the flaw in that argument is the initial claims which they amended were suits on the note for a monetary judgment. They're no longer bringing those claims now. We recognize that there may be a means of dealing with this by way of amendment. We are not Nevada lawyers. We believe that this -- this much we do know, that the way that they have done it now is simply not permissible under the Federal DJ Act.

There is nothing in the current complaint about the Nevada One Action Rule. All of the facts giving rise to the current complaint are based upon past alleged breaches. All of the defenses that they claim they need to make my client's complaint, as a result of the One Action Rule are already pleaded as defenses.

And nothing about the One Action Rule in Nevada can by rule amend or broaden what the Federal DJ Act can be used for both under the plains word of the act and Brillhart and its progeny as to how to use that act. So that we would just submit yes, we don't expect these claims to be dismissed with prejudice. We think that the debtor has choices here and that

the DJ, however, is not one of those choices. They have choices of filing in Nevada where the collateral may be sufficient to cover their indebtedness. They have a number of choices. We just submit that one of those choices is not a DJ action because no Nevada rule can change a federal statute.

THE COURT: Well I must say, it's not clear to me that these claims arise under a federal statute.

MR. RICHARD: The statute that they're using is the Federal Declaratory Judgment Act.

THE COURT: Well, what I believe they're doing is finessing the claims that are really damage claims by characterizing them as declaratory judgment claims and doing so openly as a means to avoid the potential adverse impact of the One Action Rule that we've been talking about in Nevada. So I think it may be more of a labelling than it is anything else.

Now I hear what you're saying. One way or another they're going to bring these claims and one way or another these claims are going to be brought in a manner that doesn't prejudice their rights under Nevada law. But everybody who is talking about these issues, by their own admission, are not Nevada lawyers. That was my first question to the group.

So what do you want me to do? Because I'm not going to wipe out, and you know I'm not going to wipe out, these affirmative defenses and counterclaims.

MR. RICHARD: Well --

THE COURT: It's really just a question of how do you properly plead in order to get around the potential adverse impact of a local practice?

MR. RICHARD: We haven't moved to strike their affirmative defenses which was one of our four arguments that when they said we need this in order to defend, all of the allegations of the DJ are in their affirmative defenses to our claim. We're not challenging those in any way. That's number one.

Number two, what we would like this court to do is to dismiss without prejudice the way that it has been approached now to create an opportunity to plead it the correct way under either Nevada law or the law applicable in this jurisdiction. And of course we've got a little bit of a conflict of laws issue here because a lot of the documents are subject to New York law.

THE COURT: But the remedies are subject to Nevada law.

MR. RICHARD: The remedies are subject to Nevada law. So I think that it requires more thought to do it correctly. When one factors in Rule 15 of the Federal Rules, by saying that we are not going to proceed with our claims on the note suing for a money judgment and we're deliberately not doing that, they raise the spectre of exactly the issue that they are arguing they're trying to avoid and that's waiver of a

compulsory counterclaim because what the compulsory counterclaim Rule 15 says is either bring the claim, in this case for a monetary judgment or forever hold your peace. And so that by saying we're going to amend out of that claim into a DJ claim, it doesn't accomplish the purpose and the rationale behind what they're saying they're doing.

And so that we're suggesting that at his stage, that it should be dismissed, these -- at least three or four DJ counts without prejudice to see if they can amend, to perhaps after consultation with Nevada counsel. And that's our commentary on three of the four counts. There's still a fourth count that we haven't addressed.

THE COURT: The stay violation.

MR. RICHARD: Yes.

THE COURT: Do you want to go to that?

MR. RICHARD: Yes. The stay violation, the first argument is the same that it's not an action on the stay violation. It's to declare that there was a stay violation. So that ground we've already argued. There's no one action rule involved there. They're using the DJ Act to try and get an adjudication by way of declaration that some prior past conduct was, in fact, a violation of the automatic stay.

The second ground for dismissal of the stay -- of the automatic stay declaration, the way that we raised it in our motion to dismiss is as we read the complaint, we thought that

they were seeking a declaration that our adversary action itself was a violation of the automatic stay. And we argued that way in our motion.

In their response, they've come back and they indicate no, that's not the basis of our assertion. Of course it's not the basis because you could bring an adversary action. Instead they say the basis for violation of the automatic stay is alleged in paragraphs 4 through 14 and 40 through 42 of their counterclaim. I've examined those paragraphs and the only factual allegations in those paragraphs is a breach of a promise to pay indebtedness.

The two cases that the debtor Lehman cites in their response, the Citizen Bank v. Strumpf, which is a U.S. Supreme Court case and Holden v. IRS, both say on their face that a breach of a promise to pay is not a violation of the automatic stay. The examples of cases that they give in their brief where the automatic stay was violated are cases where the IRS or a bank puts a hold on money that belongs to the debtor and exercises dominion and control over that money. And, in fact, those were factors in both of those cases.

In one case, which was the U.S. Supreme Court case, Strumpf, they pointed out that under the law of that case the money in the bank account was actually not money that belonged to the debtor. It was money that was owed by the bank to the debtor, i.e, a promise to pay. And then the Supreme Court goes

on to say that "breach of a promise to pay is never a basis for violation of the automatic stay."

And the other case that they cite, Holden v. IRS, IRS put a hold on a two thousand dollar -- it was a two thousand dollar tax refund because the debtor owed the IRS 120 OR 170 dollars. And they put a hold on the entire two thousand dollars.

In that case, it was found that that was a violation or might be a violation of the automatic stay. The bankruptcy court dismissed the action and the district court reinstated it saying there may be a violation of the automatic stay but emphasized citing Strumpf that if all it was was a breach of a promise to pay, there could not have been a violation of the automatic stay.

So our basis for seeking to dismiss Count Four is those two bases. It's an improper use of the DJ act and number two, based upon all of the allegations there can't be a violation of the automatic stay here.

THE COURT: Okay. Understood.

MS. LEMMER: I'd like to clarify some of the points that Your Honor aptly brought up earlier. The plaintiffs brought the action to this court first. On the day that the loan that Lehman had made to the plaintiffs matured, the very same day they filed a breach of contract action, among other things, against Lehman and Lehman as counsel pointed out, was

compelled to answer and assert its compulsory counterclaims.

They filed its compulsory counterclaims and asserted its damage actions and upon further review of the Nevada statute, it recognized that that could potentially foreclose its right to foreclose later on.

Now nothing that Lehman has done has been in a sinister or a secret way. As Your Honor noted, Lehman has been very open about the reasons that it sought to amend its compulsory counterclaims and that motion was actually unopposed by the plaintiffs.

I understand that no one in this courtroom, Your Honor -- I apologize, I'm having difficulties -- no one in this courtroom, Your Honor, is a Nevada attorney but if it would please the Court, I have copies of the Nevada One Action statute with me and I'm happy to walk through Your Honor and counsel, how it is that Lehman arrived at its decisions to amend its counterclaims and show that the amendment that Lehman sought is perfectly consistent with the language of the Nevada statute.

Now Mr. Richard acknowledges there's a paucity of case law on this issue but even reading the statute on its face it's consistent with that. If I could approach, I'm happy to hand Your Honor a copy of the statute, as well as counsel and we can go through this.

THE COURT: If it will facilitate your argument, I'll

take a look at it. I'm not happy about taking a look at it but I'll take a look at it.

MS. LEMMER: Well, Your Honor, I'm not interested in disturbing the Court.

THE COURT: Well, no, it's not that. It's just it's kind of consistent with how I started this discussion and reading the pleadings in all three cases, it is apparent that these cases one way or another tie to the same Fontainebleau real estate project or Town Center project in Las Vegas. No doubt, given the sophistication of the parties involved, there are plenty of Las Vegas lawyers who touched the documents. So it shouldn't be a mystery how one would go about exercising remedies, at least under Nevada law and in a Nevada state court.

I suppose the mystery or the question may be how the Nevada One Action Rule, which you're about to take me through, applies in an adversary proceeding within the Lehman bankruptcy. I rather suspect that there is nothing directly on point in the material you're about to show me but I'm happy to look at it.

MS. LEMMER: Correct, Your Honor. The material I was about to show you is not to relate the Nevada One Action Rule to the Lehman adversary but instead it was to point out the bases for the amendments. So, I'm happy not to walk Your Honor through. However, what the Nevada One Action Rule does provide

is to the extent that an action has been commenced, that violates the One Action Rule. Then to the extent that the plaintiff, who commences that action, converts under Nevada statute 40.35, converts that action to a declaratory action that is not violative, then they won't risk -- that plaintiff won't risk implicating the Nevada One Action Rule.

THE COURT: And who says that? Is that part of the statute or is that commentary?

MS. LEMMER: Yes, Your Honor. It's part of the statute.

THE COURT: And under what authority would that declaratory judgment be brought?

MS. LEMMER: Well it could be brought under the federal -- the DJA, Your Honor, or it could be brought under whatever state declaratory judgment statute was in place. The Nevada statutes don't provide specifically which declaratory judgment authority the plaintiff must rely upon.

THE COURT: I think I understand this because I even engaged in colloquy with your adversary in which I discussed --

MS. LEMMER: Yes.

THE COURT: -- my understanding of your papers to be that the declaratory judgment styling of the counterclaims was specifically undertaking within Delaware One Action Rule practice to avoid waiving foreclosure rights.

MS. LEMMER: Correct.

THE COURT: So I don't know that I need to see the statute. I gather that -- I'll look at it but I understand the argument. Your argument is that this is actually something that's consistent with the statute. That doesn't get us to the next step which is is it consistent with federal pleading?

MS. LEMMER: Well, Your Honor, yes. We've sought -- the issue with federal pleading that counsel has raised is what is the uncertainty and what is the harm and they allege that the issues complained of were past acts. But again, the uncertainty and the harm as we've noted in our papers, is that if we were to continue to pursue monetary damage claims as they had been previously styled, we would risk violating the One Action Rule. Conversely --

THE COURT: Let me just break in and better understand that risk. And again, I'm by no means expert in this area of local practice and I think we've all confirmed that there's nobody in the room who is an expert in this practice. We could probably find such a person. But as I understand your papers, the problem is triggered not by the pleading but by the entry of a judgment.

MS. LEMMER: Correct.

THE COURT: Is that correct?

MS. LEMMER: That's correct.

THE COURT: So if we are at the pleading stage, and you have all kinds of preparatory language in your complaint

that says everything that we're doing in this pleading is designed to avoid any waiver that might arise under the Nevada One Action Rule as it relates to foreclosure and money judgments. And there are footnotes and all kinds italics and that you can't miss that that's your position. And we actually end up in the unlikely event and I view it as unlikely, of a trial of this particular adversary proceeding and you win, in connection with your counterclaims, can't you control the adverse effect, if any, of having won on any of your counterclaims by simply not then entering judgment?

We were dealing with this at the very beginning of this afternoon's adversary docket because I entered a memorandum decision last month. Nobody has an appealable order yet. There's no judgment yet. Lawyers get together and they work these things out. Can't that happen here?

MS. LEMMER: It's possible, Your Honor. But there is a concern that a judgment could be entered and there is a concern that whatever the effect of that victory, that hypothetical victory would be, could be construed as a judgment for the purposes of the Nevada One Action Rule.

So rather than engage in a long process where parties are incurring expenses litigating claims, monetary -- the natural result of which could be a judgment, it seemed the more prudent move to act consistent with the Nevada One Action statute and convert as that statute provides to a declaratory

action and seek declaratory relief.

THE COURT: I understand that but you're now needing a motion to dismiss that says you're not entitled to that relief and that it was a nice try but you fail. And let's just say that I were to grant their motion to dismiss and gave you leave to amend, what would you do?

MS. LEMMER: Well --

THE COURT: What could you do?

MS. LEMMER: We would have to evaluate, Your Honor, whether we would want to amend and see and request the same monetary damages that we had earlier or alternatively ask the Court to stay this action, so that we could pursue rights in Nevada. Unfortunately, these were not the choices that Lehman had. Lehman was put in this position because they were sued first and they had a choice of either submitting their compulsory counterclaims and proceeding as set forth or waiving those compulsory counterclaims. Neither choice seemed an appropriate choice.

THE COURT: Well I think that what you have here is a procedural dilemma that should have a practical resolution. I am not inclined to do anything here that will adversely affect the substantive rights of Lehman simply because there's a procedural snag under applicable non-bankruptcy law; here, Nevada One Action Rules.

If this had been instead of an adversary proceeding, a

proof of claim and I believe there are proofs of claim that have been filed that cover the same subject matter; isn't that right?

MS. LEMMER: Yes.

THE COURT: Lehman would not, it seems to me, be precluded from objecting to the proof of claim and raising any number of affirmative defenses to that proof of claim; would that procedural posture implicate the One Action Rule?

MS. LEMMER: Your Honor, again I don't purport to be an expert on Nevada law but I would see an affirmative defense as different than a counterclaim. That said, could someone later say you raised an affirmative defense in connection with the litigation of the proof of claim. There was a judgment obtained. As a result of that judgment, you're now foreclosed from seeking to foreclose in Nevada, that's a possibility.

So all we're asking the Court is we do not want to deprive counsel of their rights to object and raise any arguments that they wish to raise. All we're seeking to do is insure that we are not prevented or excuse me, that we don't forfeit any of our substantive rights under the Nevada statute.

THE COURT: Here's what I'd like to accomplish. I can rule one way or the other on this. I think we all understand what we're talking about. We're talking about a very narrow question and there isn't a person in the room who has true expertise on the subject matter.

I understand that Lehman simply trying to avoid a risk which may be purely theoretical as opposed to real, so as not to inadvertently waive a right of action under local law; correct?

MS. LEMMER: Correct.

THE COURT: Have the parties in the literally years since this litigation has been pending, endeavored to explore some kind of thoughtful lawyer-like way to come up with a means to protect everybody's rights so that there are no inadvertent waivers and all rights are reserved?

MS. LEMMER: Your Honor, some of the parties that have been involved have switched over as counsel advised the Court earlier. To my knowledge, the discussions between the parties has been more towards the aim of ultimately settling the disputes between the parties as opposed to resolving the differences that are -- the procedural differences that are at issue before the Court today.

I know -- I can anticipate where Your Honor is going with this. I'm happy to try to discuss this with counsel and arrive at essentially some sort of agreement or settlement that would have the effect of protecting everyone's rights. But absent that, Your Honor, I don't believe that anyone has specifically aimed in any other settlement conversations or any other discussions dealing with this One Action situation.

THE COURT: Okay. Well it's obvious to me from having

looked at all three of these cases and the procedural posture of the cases, that the cases have, and I say this charitably, languished at least as it relates to docketed activity.

MS. LEMMER: Uh-hum.

THE COURT: The motions to dismiss are not dispositive motions and in the end don't really affect one way or the other the rights of the parties. The violation of the automatic stay issue which we haven't even addressed is frankly something that I have some problems with and I'm going to give you an opportunity to respond to that. But I don't -- I see this as a dispute over payment and performance under various loan documents. These were sophisticated parties who engaged in a sophisticated real estate deal and they have claims against each other. That's apparent.

If you are, in fact, engaged in substantive discussions that may lead to an overall resolution, that's great. I note that these cases have been adjourned on any number of occasions, such that we end up addressing these motions to dismiss today for reasons that escape me. I don't know why the parties decided that this was the time to have it out but even then you ended up resolving by agreement two of them.

It's not a happy pattern from my perspective because to the extent that I am involved, I'm doing work, my clerks are doing work, we're thinking about the issues, we're being paid

for that but it's terribly wasteful if you're in fact then going to reach agreements.

Is there an ability to reach an agreement with respect to the one matter that we're arguing? It seems to me that the parties are capable of that. It's about reservations of rights and avoiding inadvertent adverse consequences. No?

MS. LEMMER: Correct, Your Honor. I agree. I would be happy to explore reaching an agreement with the Soffers and Turnberry.

THE COURT: Okay. Here's what I am going to suggest. I'm going to carry this to the next scheduled omnibus hearing with -- just as a holding date and I'm not suggesting that people actually need to travel here from Florida unnecessarily. But I would urge the parties to either accept the pleadings as they are with the understanding that they are slightly imperfect as they relate to declaratory judgment relief but nonetheless congruent with what appears to be the teachings of the Nevada One Action Rule, so there is at least some ability to say that a declaratory judgment action can be brought in lieu of a damage claim.

Or that there be a further amendment of the claims that are at issue to restyle them. But in the end, it doesn't matter. The plaintiffs know what it is that you're asserting and we're dealing with procedural niceties that are frankly wasteful. So, I would suggest that you spend a little time

trying to work out some kind of stipulation that accomplishes everybody's objectives and that avoids further waste.

MS. LEMMER: Thank you, Your Honor. I agree with that suggestion.

THE COURT: Is that all right with you?

MR. RICHARD: Yes, Your Honor.

THE COURT: As far as the count for stay violation, I frankly don't see it and while this isn't a ruling, it's a comment. This appears to be a non-payment. It's not the exercise of control over debtor property. Unless you can demonstrate to me that there is a good claim to be made, that there is a fund of property that is being held by your adversary that constitutes what amounts to a fund that could be used to offset the obligations owed to you, that might be a different setting. But if it's just money due and owing, I don't see this as a stay violation in the least.

MS. LEMMER: Your Honor, at this stage of the litigation, we do not know if they're holding a fund because this litigation is essentially as Your Honor has pointed out, in its infancy. We haven't been able to conduct any discovery. So to the extent that they have a fund, we don't know either way.

However, just to address and I understand Your Honor may be issuing an advisory opinion or cautioning us, but the Strumpf decision that was cited -- that we cited and that

counsel discussed, that supreme court had a narrow holding there. The issue there was that the bank had placed an administrative freeze but it was a temporary administrative freeze while it sought stay relief to essentially offset --

THE COURT: Yes, but it was exercising the right of setoff. That case is routinely cited in the setoff context. This isn't a setoff case, as far as I know. This is a claim for breach of contract and money due and owing.

MS. LEMMER: Well again, Your Honor, it's in its infancy. I would submit that to the extent that that's the case, counsel has the opportunity to raise that argument but in the motion to dismiss stage, we still don't know.

THE COURT: I'm prepared to grant the motion to dismiss as it relates to the alleged stay violation but without prejudice to your ability to in effect amend later. Everybody's on notice of this. If a fact should develop that would give rise to such a claim. But on its face, it appears to be a claim that would not ordinarily be appropriate.

MS. LEMMER: Okay. Thank you, Your Honor.

THE COURT: And I suggest that you might use these comments as guidance to develop an agreed resolution of the pleading issues that relate to this one case.

MS. LEMMER: We will. Thank you, Your Honor.

THE COURT: Okay. So let's carry this to the next omnibus hearing date with the hope that I don't have to see you

then.

MS. LEMMER: Thank you.

THE COURT: I think that takes care of the afternoon calendar. We're adjourned.

(Whereupon these proceedings were concluded at 3:20 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Linda Ferrara, certify that the foregoing transcript is a true and accurate record of the proceedings.

Linda Ferrara

Digitally signed by Linda Ferrara
DN: cn=Linda Ferrara, o, ou, email=digital1@veritext.com, c=US
Date: 2011.06.17 13:31:01 -04'00'

LINDA FERRARA

Veritext
200 Old Country Road
Suite 580
Mineola, NY 11501

Date: June 16, 2011